

SUMMARY OF 2004 PUBLIC ACTS

Connecticut General Assembly

**OFFICE OF LEGISLATIVE RESEARCH
LEGISLATIVE OFFICE BUILDING
ROOM 5300
HARTFORD, CT 06106**

E-Mail:	olr@po.state.ct.us
Telephone:	(860) 240-8400
Web Site:	http://www.cga.state.ct.us/olr/

OFFICE OF LEGISLATIVE RESEARCH

Mary M. Janicki, Director
John Moran, Project Manager
Janet Kaminski, Assistant Project Manager
Tracey Jones-Otero, Project Coordinator

Research Staff

Robin Cohen
Soncia Coleman
George Coppolo
Daniel J. Duffy
James J. Fazzalaro
Paul Frisman
Jennifer Gelb Carbee
Joseph Holstead
Mary M. Janicki
Janet Kaminski
John Kasprak
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Ryan O'Neil
Tangy Stroman

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NOTICE TO USERS

This publication, *Summary of 2004 Public Acts*, summarizes all public acts passed by the 2004 Regular Session and the May 2004 Special Session of the Connecticut General Assembly. Special acts are not summarized.

It is important to note that special session acts may have changed provisions of the acts passed in the regular session. See the summaries of the special session acts for a description of those changes.

Use of this Book

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Organization of the Book

The summaries are organized in chapters based on the committee that sponsored the bill. Bills sent directly to the floor without committee action (emergency certification) are placed in chapters according to subject matter. The three acts from the May 2004 Special Session appear in a separate chapter for the Special Session. Within each chapter, summaries are arranged in order by public act number.

A table on penalties, appearing on the next page, describes the fines and prison sentences for various types of offenses. In the back of the volume is a list of acts by public act number.

Vetoed Act

The governor vetoed one public act, PA 04-155, An Act Concerning Medical Malpractice Insurance Reform.

TABLE ON PENALTIES

Crimes

The law authorizes courts to impose fines, imprisonment, or both when sentencing a convicted criminal. They must specify the period of incarceration for anyone so sentenced. The prison terms below represent the range within which a judge must set the sentence. The judge also sets the exact amount of a fine, up to the established limits listed below. Some crimes have a mandatory minimum sentence or a minimum sentence higher than the minimum term specified in the table. Repeated offenses may result in a higher maximum than specified here.

<i>Classification of Crime</i>	<i>Imprisonment</i>	<i>Fine</i>
Capital felony	execution or life	—
Class A felony (murder)	25 to 60 years	up to \$20,000
Class A felony	10 to 25 years	up to 20,000
Class B felony	1 to 20 years	up to 15,000
Class C felony	1 to 10 years	up to 10,000
Class D felony	1 to 5 years	up to 5,000
Class A misdemeanor	up to 1 year	up to 2,000
Class B misdemeanor	up to 6 months	up to 1,000
Class C misdemeanor	up to 3 months	up to 500

Violations

CGS § 53a-43 of the Penal Code authorizes the Superior Court to fix fines for violations up to a maximum of \$500 unless the amount of the fine is specified in the statute establishing the violation. CGS § 54-195 on criminal procedure requires the court to impose a fine of up to \$100 on anyone convicted of violating any statute without a specified penalty.

A violation is not a crime; thus a violator does not have a criminal record. Most statutory violations are subject to Infractions Bureau procedures which allow the accused to pay the fine by mail without making a court appearance. As with an infraction, the bureau will enter a *nolo contendere* (no contest) plea on behalf of anyone who pays a fine in this way. The plea is inadmissible in any criminal or civil court proceeding against the accused.

Infractions

Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus a \$20 or \$35 surcharge and an additional fee based on the amount of the fine. There may be other added charges depending upon the type of infraction. For example, certain motor vehicle infractions trigger a Transportation Fund surcharge of 50% of the fine. With the various additional charges the total amount due can be over \$300 but often is less than \$100.

An infraction is not a crime; thus violators do not have criminal records and can pay the fine by mail without making a court appearance.

Larceny

There are six different classifications of larceny, generally depending on the value of the property illegally obtained.

<i>Degree of Larceny</i>	<i>Amount of Property Involved</i>	<i>Classification</i>
First Degree	Over \$10,000	Class B felony
Second Degree	Over 5,000	Class C felony
Third Degree	Over 1,000	Class D felony
Fourth Degree	Over 500	Class A misdemeanor
Fifth Degree	Over 250	Class B misdemeanor
Sixth Degree	\$250 or less	Class C misdemeanor

PA 04-5—sHB 5004

*Select Committee on Aging
Public Health Committee
Human Services Committee
Appropriations Committee*

**AN ACT CONCERNING INTERIM RATES FOR
LICENSED CHRONIC AND CONVALESCENT
NURSING HOMES AND REST HOMES WITH
NURSING SUPERVISION**

SUMMARY: The Department of Social Services (DSS) reimburses nursing homes for Medicaid-covered residents through a complex, cost-based rate setting formula, but the legislature in recent years has set a percentage cap on annual increases or delayed them. Before 2003, the DSS commissioner could grant temporary, higher “interim rates” at the request of nursing homes that could prove financial hardship or that were sold. 2003 legislation prohibited increases in nursing homes’ Medicaid reimbursement rates during FYs 2004 and 2005, except for a general 1% increase on January 1, 2005 and other limited situations. It also required homes whose temporary higher interim rates expire to receive the lower rates they would have otherwise received until the 2005 general increase.

This act allows the commissioner, from April 1, 2004 though June 30, 2005, to grant an interim rate increase only if the nursing home requests it and it is needed to avoid certain events, such as bankruptcy, receivership, or substantial financial deterioration and if certain other conditions are met. It prohibits the commissioner from granting any interim rate increases after June 30, 2005, regardless of any other provision of law. The act prescribes factors the commissioner must consider before granting an interim rate increase, places certain limits on the increase, and requires her to recover the increase if the home is sold within five years under certain circumstances. It requires the commissioner to report on these rates quarterly to legislative committees and makes other related changes.

EFFECTIVE DATE: Upon passage

INTERIM RATE INCREASES

PA 03-3, June 30 Special Session, which generally froze Medicaid payments to nursing homes at their June 30, 2003 level for FY 2004 and the first half of FY 2005, also prohibited the DSS commissioner from adjusting a nursing home's annual rate for FYs 2004 and 2005 for any reason other than to: (1) reflect the 1% general increase on January 1, 2005, (2) lower a rate, or (3) include extraordinary and unanticipated costs in accordance with existing law.

This act eliminates the prohibition on adjustments and the specific exceptions and, instead, allows the DSS

commissioner, within available appropriations and regardless of other provisions of law, to provide an interim rate increase for a nursing home for rate periods no earlier than April 1, 2004 under certain conditions (normally, rate periods run from July 1 to June 30). She may grant an interim rate increase only if she determines it is needed to avoid the institution's (1) filing for bankruptcy, (2) being placed into receivership, or (3) having its financial condition substantially deteriorate so that it can be expected to adversely affect resident care and the facility's continued operation (she must also determine that the facility's continued operation is in the state's best interest). The 1% general increase is still scheduled for January 1, 2005 and applies to the rate the home is receiving on December 31, 2004.

The act requires the commissioner to consider any requests for interim rate increases on file with DSS from the act's passage and requests submitted subsequently for rate periods no earlier than April 1, 2004.

**COMMISSIONER'S CONSIDERATIONS FOR
INCREASE**

When reviewing interim rate increase requests under the act, the commissioner must, at a minimum, consider:

1. existing nursing home use in the area and projected bed need;
2. physical plant long-term viability and the owner's or purchaser's ability to implement needed property improvements;
3. licensure and certification compliance history; and
4. reasonableness of actual and projected expenses, but not the facility's immediate profitability.

INCREASE LIMITS

The act prohibits any interim rate increase beyond 115% of the median rate for the facility's peer grouping, unless the commissioner recommends it and the Office of Policy and Management (OPM) secretary approves after consulting with the commissioner. It requires DSS to publish these median rates annually by April 1. The law establishes two geographic peer groupings of nursing homes for each level of care (chronic and convalescent care homes and rest homes with nursing supervision) for the purpose of determining rates and allowable costs. One peer grouping is for facilities in Fairfield County and the other is for facilities in the rest of Connecticut.

RECOVERY OF INCREASE IN CASE OF SALE

If a facility that receives an interim rate increase under the act is sold or otherwise transferred for value to an unrelated entity less than five years after the increase takes effect, the increase is considered rescinded and DSS must recover an amount equal to the difference between payments made for all affected rate periods and those that would have been made without the increase. The commissioner can seek recovery from payments made to any facility with common ownership. But she can also, with the OPM secretary's approval, waive recovery and rescission of the interim rate for good cause, consistent with the law, including transfers to family members for no value.

REPORTING

The act requires the commissioner to make written quarterly reports to the Human Services, Appropriations, and Aging committees, listing each facility requesting an interim rate increase and the amount requested, the commissioner's and OPM secretary's action, and estimates of the additional cost to the state for each approved increase.

EXCEPTIONS

The act specifies that it does not prohibit the commissioner from increasing the rate for any nursing homes based on allowable costs associated with capital improvements or in case of sale of a nursing home that has been in receivership, as is otherwise permitted under law.

PA 04-101—sSB 8

*Select Committee on Aging
Human Services Committee
Appropriations Committee*

AN ACT CONCERNING THE PROCUREMENT OF CANADIAN PRESCRIPTION DRUGS AND THE USE OF MEDICARE PRESCRIPTION DRUG DISCOUNT CARDS UNDER THE CONNPACE PROGRAM

SUMMARY: This act modifies PA 04-6, which requires Connecticut residents who (1) are otherwise eligible for the Connecticut Pharmaceutical Assistance Contract to the Elderly and Disabled (ConnPACE) program, (2) are Medicare beneficiaries, and (3) have income at or below 135% of the federal poverty level, as a condition of eligibility for ConnPACE, to obtain a federally endorsed Medicare prescription drug discount card designated by the Department of Social Services

(DSS) commissioner for use in conjunction with ConnPACE. This act (1) requires these ConnPACE participants to reapply annually for the discount card; (2) makes the DSS commissioner their authorized representative for purposes of enrolling them in the federal \$600 transitional assistance program; and (3) allows the commissioner, as their authorized representative, to sign required forms on their behalf and enroll them in an endorsed Medicare drug discount card.

The act gives these people an opportunity to select among a number of discount cards designated by the commissioner for use in conjunction with ConnPACE and requires the commissioner to notify them of this opportunity. But if they do not select a card within a time the commissioner determines reasonable, the act requires DSS to choose a card and enroll them in it.

The act also requires the commissioner to (1) evaluate the feasibility, health and safety, legal sufficiency, and cost-effectiveness of reimporting prescription drugs from Canada for the ConnPACE program; (2) evaluate the feasibility of waiving the ConnPACE copayment for such drugs; and (3) report on the evaluation by January 1, 2005 to the Human Services, Appropriations, and Aging committees.

EFFECTIVE DATE: Upon passage

BACKGROUND

ConnPACE

The ConnPACE program helps low-income seniors over age 65 and younger disabled people, who are not poor enough for Medicaid, pay for prescription drugs. It requires participants to pay a \$16.25 per-prescription copayment and a \$30 annual registration fee. To be eligible, applicants must generally have no other prescription drug insurance or have exhausted their insurance. Their annual incomes must be less than \$20,800 if they are single or a combined income under \$28,100 if married. These income limits are adjusted every January for inflation.

Medicare Prescription Drug Cards

The federal temporary drug discount card program runs from June 2004 to January 2006. The cards will be offered by private entities such as health insurers, retail pharmacies, pharmaceutical companies, and other organizations that meet Medicare program standards. The cards' benefits and formularies can vary and people can generally choose which card they want. The annual enrollment fee can be no more than \$30.

Medicare beneficiaries with annual incomes at or below 135% of the federal poverty level (FPL) (\$12,569 for one person and \$16,862 for two for 2004) will

receive a “transitional” assistance credit of \$600 for each of the two years the program is in operation. They must pay coinsurance of 5% if their income is at or below 100% of FPL (for 2004, this is \$9,310 for one person and \$12,490 for two) and 10% if it is between 100% and 135% of FPL until they use up their \$600 credit. Unused credits carry over to the second year. The federal government pays the enrollment fee for people eligible for the \$600 credit. Medicare beneficiaries who also receive full Medicaid benefits that cover prescriptions are not eligible for the cards; their Medicaid prescription coverage continues until new federal benefits become effective in 2006 (P.L. 108-173).

Related Acts

PA 04-6, besides requiring low-income ConnPACE participants to obtain a Medicare discount card, combines their ConnPACE benefits with the cards’ benefits, and limits participants’ combined copayment total to no more than they would pay under ConnPACE (\$16.25 per prescription). In addition, it allows the DSS commissioner to require higher-income ConnPACE participants to sign up for a card if that is judged cost-effective for the state. It also places certain obligations on pharmacies participating in ConnPACE and makes a number of other statutory changes.

PA 04-104 allows ConnPACE participants to obtain replacements up to twice a year for lost or stolen prescription drugs and exempts them from the \$16.25 copay for these drugs.

PA 04-258 repeals ConnPACE asset test and estate recovery provisions enacted in 2003. It and PA 04-2, May Special Session, make changes regarding the preferred drug list for ConnPACE and other state pharmacy programs.

PA 04-104—sHB 5008

*Select Committee on Aging
Human Services Committee
Appropriations Committee
Judiciary Committee*

AN ACT CONCERNING REPLACEMENT OF LOST OR STOLEN PRESCRIPTION DRUGS UNDER THE CONNPACE PROGRAM

SUMMARY: This act allows participants in the Connecticut Pharmaceutical Contract to the Elderly and Disabled (ConnPACE) program to obtain replacements for lost or stolen prescription drugs up to twice per year. It exempts replacements from the program’s \$16.25 copay requirement.

In order for ConnPACE to pay for the replacement, the participant must sign a form prescribed by the social services commissioner, stating that he lost the drug or it was stolen or destroyed and he made a good faith effort to recover it. The act makes a ConnPACE participant’s willful misrepresentations in connection with the replacement subject to (1) liability for up to five times the value of the material gain received, (2) up to one year’s suspension of eligibility for the program for the first offense, and (3) a permanent revocation of eligibility for the second offense.

Under the act, pharmacies that submit, or help someone submit, fraudulent replacement claims are immediately terminated from participating in ConnPACE and subject to the fines described above. In addition, anyone acting for a pharmacy who submits a false or fraudulent replacement claim or helps someone else to do so is subject to a fine of at least \$1,000, imprisonment for up to one year, or both.

EFFECTIVE DATE: July 1, 2004

PA 04-158—sSB 4

*Select Committee on Aging
Public Health Committee
Human Services Committee*

AN ACT CONCERNING SERVICES PROVIDED BY THE LONG-TERM CARE OMBUDSMAN IN MANAGED RESIDENTIAL COMMUNITIES AND THE PATIENTS’ BILL OF RIGHTS FOR RESIDENTS OF NURSING HOMES AND CHRONIC DISEASE HOSPITALS

SUMMARY: This act enhances patients’ rights and required disclosures in nursing homes and chronic disease hospitals and requires the Office of the Long-term Care Ombudsman to create a pilot program, within available appropriations, to provide assistance and education to residents in assisted living facilities. It prescribes the types of assistance and education the ombudsman office must provide, sets requirements for how it must develop the pilot, gives priority for these services to people in state-subsidized assisted living programs, and requires a report on the pilot by June 30, 2005.

EFFECTIVE DATE: October 1, 2004, but upon passage for the long-term care ombudsman office assisted living pilot

PATIENTS’ RIGHTS

Under state and federal law, nursing homes and chronic disease hospitals must fully inform patients about their rights and provide each patient with a copy

of a document that lists these numerous rights (called the “patients’ bill of rights”).

The act gives patients in these institutions the specific right to be fully informed about their rights by state or federally funded patient advocacy programs and requires the institutions to include this right in the written “patients’ bill of rights” they give patients. It also (1) requires the bill of rights to conform to federal law concerning general patients’ rights, written care plans, and quality of care; (2) adds receiving quality care with reasonable accommodation of individual needs and preferences as one of the rights that must be disclosed in the bill of rights; (3) specifies that the patient’s right to a written care plan under which the patient can receive psychopharmacologic drugs must be consistent with federal law; and (4) makes technical changes.

LONG-TERM CARE OMBUDSMAN ASSISTED LIVING PILOT

The act requires the Office of the Long-Term Care Ombudsman to develop and implement a pilot program, within available appropriations, to provide assistance and education to residents of assisted living facilities, known as managed residential communities (MRCs), who receive services from a licensed assisted living services agency (ALSA). (The office currently helps residents in nursing homes and residential care homes with complaints and advocates for them.)

Under the act, the office must provide assistance and education to MRC residents (1) who are temporarily in a hospital or long-term care facility and return to the MRC, (2) who have issues relating to an MRC admissions contract, and (3) to assure adequate and appropriate services are being provided, including services for cognitive impairments.

The act requires the office to develop the pilot program in cooperation with MRCs and ALSAs and give priority to residents who participate in state-subsidized assisted living programs located in:

1. state-assisted elderly congregate housing,
2. planned state-assisted affordable elderly housing locations (four have been selected and the first of these may begin operating in 2004),
3. up to four federally subsidized elderly housing complexes where the state pays for assisted living services, and
4. private MRCs participating in a Medicaid or state-funded assisted living pilot program that subsidizes services for people who run out of their own funds.

To the extent appropriations are still available after services are provided to residents in the state-subsidized programs, the act also requires the office to provide assistance and education to residents in other MRCs, where assisted living is not subsidized by the state.

The act requires the office to report on the pilot program by June 30, 2005 to the social services and public health commissioners and the Human Services, Public Health, Appropriations, and Aging committees.

BACKGROUND

Patients’ Bill of Rights

Patients in nursing homes and chronic disease hospitals have numerous rights, such as to be informed about services and charges, choose their own physician, be informed about their medical condition, participate in planning their care, have their grievances resolved promptly, be free from abuse or restraint, have their personal and medical records treated confidentially, receive reasonable accommodation for their individual needs and preferences, associate and communicate privately with other people, participate in patient groups and other organizations, and receive certain protections related to room transfers and discharges from the institution.

Federal law contains provisions generally similar to state law concerning patients’ rights and provisions on quality care, quality assessment and assurance, and written care plans (42 U.S.C.A. §1396r (b) and (c)).

Assisted Living and MRCs

Assisted living is primarily for people age 55 and older who do not need full nursing home services, but require some health care, nursing, or assistance with activities of daily living, such as dressing, eating, bathing, using the toilet, or transferring from a bed to a chair. Although people informally refer to an “assisted living facility,” Connecticut regulates “assisted living services,” which must be provided by a state-licensed ALSA. And the ALSA can provide these services only at an MRC, which is not licensed but must comply with Department of Public Health regulations by providing residents with (1) their own separate apartment with a full bath and access to food preparation facilities and (2) certain “core services,” such as meals, housekeeping, laundry, maintenance, transportation, and social and recreational activities.

PA 04-116—SB 607

Appropriations Committee

AN ACT CONCERNING THE INVESTMENT OF MUNICIPAL LOSS AND RETIREE BENEFITS RESERVE FUNDS

SUMMARY: This act increases the maximum share of a municipal loss and retiree benefit reserve fund that may be invested in stocks from 31% to 40% of the total amount invested.

By law, a municipality may create such a fund at the recommendation of its chief executive officer and with the approval of its budget-making authority, and use it to pay property or casualty losses, employee retirement benefits, and related expenses. At least 50% of the invested share of such a fund must be invested in U.S. government obligations, certificates of deposit, "commercial paper" (short-term notes issued by large corporations), savings accounts, and bank acceptances (notes issued by nonfinancial companies whose principal and interest are guaranteed by a bank).

EFFECTIVE DATE: Upon passage

PA 04-204—SB 624

Appropriations Committee

AN ACT INCREASING THE MEMBERSHIP OF THE STATE ETHICS COMMISSION AND CONCERNING RECOMMENDED APPROPRIATIONS AND ALLOTMENTS OF THE STATE ETHICS, ELECTIONS ENFORCEMENT AND FREEDOM OF INFORMATION COMMISSIONS

SUMMARY: This act prohibits the governor from reducing the annual budgets of the State Ethics, State Elections Enforcement, and Freedom of Information commissions. It requires the Office of Policy and Management (OPM) secretary to include in the proposed budget documents that OPM submits to the legislature the estimates of expenditure requirements, together with any recommended adjustments and revisions, the office receives from the executive directors of the commissions.

The act increases the State Ethics Commission's membership from seven to nine. It requires the House and Senate majority leaders to each appoint one new member from a list of nominees submitted by a citizen government-interest group of their choosing. The majority leaders' appointees serve initial two- and four-year terms, respectively.

Beginning October 1, 2004, the act requires one of the governor's three appointments to the commission to represent a government-interest group of his choosing.

By law, the other appointing authorities are the Senate president pro tempore and minority leader (one each), and the House speaker and minority leader (one each). The act makes corresponding changes to reflect the increase in the commission's membership.

EFFECTIVE DATE: Upon passage, except for the budgetary provisions, which are effective July 1, 2004.

CONFIRMING ETHICS COMMISSION CHANGES

Table 1 shows changes the act makes in the number of State Ethics Commission members needed for certain actions to conform to the increase in the commission's size.

Table 1: Changes Mandated by Increase in Ethics Commission Size

<i>Action</i>	<i>Prior Law</i>	<i>Act</i>
Maximum members from the same political party, members required to call a meeting, or concurring votes needed to issue an advisory opinion or find probable cause of a code violation	4	5
Members needed for a quorum or concurring votes needed to find a lobbyist in violation of the code or impose a civil penalty against him	5	6
Concurring votes needed to find a public official or state employee in violation of the code or impose a civil penalty against him	5	7

PA 04-215—HB 5690

*Appropriations Committee
Education Committee*

AN ACT CONCERNING SCHOOL READINESS

SUMMARY: This act:

1. increases the maximum competitive grant amount for which an eligible town or regional school readiness council may apply from \$100,000 to \$107,000 per priority school;
2. increases the maximum amount for which a school readiness program can be reimbursed from State Department of Education (SDE) funds;

3. allows programs to apply for a waiver from certain school readiness scheduling requirements;
4. pushes back the deadline by which a town with a priority or former priority school district must earmark grant funds before SDE can reallocate a percentage to other towns;
5. increases the percentage of noncompetitive grant funds that SDE can reallocate and allows the remaining percentage of unallocated funds to be used for professional development of school readiness staff;
6. eliminates provisions requiring SDE to allocate specific percentages of school readiness funds to the competitive and noncompetitive grant programs; and
7. requires school readiness councils to compile information on the cost of providing universal school readiness to eligible children not being served in priority districts and a report to the Education Committee.

EFFECTIVE DATE: July 1, 2004

PER CHILD REIMBURSEMENT COSTS

The act increases the maximum per child reimbursement for the SDE school readiness component of a program offered by a school readiness provider to \$6,400 from \$5,891. Child day care services are not subject to this cost limitation.

SCHEDULE WAIVER

The act allows towns or school readiness councils to seek a waiver from SDE for a school readiness schedule that varies from (1) the current minimum number of hours (450) and days (180) or (2) the definition of "year-round" program as one that runs 50 weeks per year.

SDE, in consultation with the Department of Social Services, may grant the waiver if the proposed schedule (1) is in line with the purposes behind the development of school readiness programs and (2) maximizes available funds or addresses community needs. The act requires SDE to provide waiver application forms.

The act also deletes obsolete references to approved programs.

NON-COMPETITIVE GRANT SPENDING PLANS

The act changes, from January 1 to October 1, the date by which a town must submit a plan to SDE for spending all the non-competitive grant funds for which it is eligible before SDE can use unallocated funds to provide supplemental grants to other eligible towns. It

increases the percentage of those funds that may be used for supplemental grants from 50% to 70%.

The act also allows SDE to use the remaining 30% of those funds for school readiness professional development. This includes, but is not limited to, scholarship assistance for school readiness staff to attain early childhood education certification and staff training to enhance literacy teaching skills.

ALLOCATION OF FUNDS BETWEEN GRANT PROGRAMS

The act eliminates the requirements that 93% of school readiness program funds be used for non-competitive grants and 6.5% for competitive grants. The act continues to allow SDE to maintain the remaining one-half of one percent of funds for program coordination, program evaluation, and administration.

SCHOOL READINESS REPORTING

The act requires local school readiness councils to help identify the number of children in priority school districts who are not being served by school readiness programs and the estimated operating cost of providing these programs to them. The act requires the councils to include this information in the biannual reports they submit to SDE on the number and location of school readiness spaces and estimates of future needs.

The act requires the State Board of Education, within available appropriations, to make reasonable efforts to ensure that school readiness councils submit summaries of those reports by December 15, 2004, and annually thereafter. Apparently it requires the board to further summarize the reports and submit the summaries to the Education Committee. It does not specify a date by which the board must submit the summaries.

BACKGROUND

Non-Competitive Grant Programs

These funds are distributed to provide spaces in school readiness programs for students who reside in priority school districts, which are the most economically and educationally needy districts based on various statutory criteria.

Competitive Grant Programs

Towns or regional school readiness councils may apply for these funds to provide spaces in school readiness programs for eligible children who reside in an area served by a priority school or a former priority school. A priority school is one (1) in which 40% of school lunches served are served to students who are

eligible for free or reduced price lunches and (2) that is not currently located in a priority school district, former priority school district, or transitional school district.

PA 04-216—HB 5692
Emergency Certification

AN ACT MAKING ADJUSTMENTS TO THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2005, AND MAKING APPROPRIATIONS THEREFOR, MAKING DEFICIENCY APPROPRIATIONS FOR THE FISCAL YEAR ENDING JUNE 30, 2004, AND MAKING ADJUSTMENTS TO STATE AND MUNICIPAL REVENUES

SUMMARY: This act adjusts FY 2004 and FY 2005 appropriations for various state agencies and programs and revises FY 2004 and FY 2005 revenue estimates for the General Fund and FY 2005 revenue estimates for several special funds. It adds \$262.3 million to FY 2005 General Fund program appropriations and \$7.7 million to Special Transportation Fund program appropriations. It transfers \$125.3 million in FY 2004 General Fund revenue to FY 2005 General Fund revenue.

The act transfers specified funds for various purposes in FY 2005, appropriates \$202.9 million from the General Fund for various agencies to fund FY 2004 deficiencies, appropriates federal funds the state will be receiving, and carries forward certain unspent FY 2004 appropriations to be used for specified purposes in FY 2005 instead of allowing them to lapse. It eliminates the governor's special authority to make up to \$55 million in deeper-than-normal rescissions in FY 2005 budget appropriations on or after October 1, 2004.

The act increases the maximum property tax credit against the state income tax from \$350 to \$500 starting January 1, 2005, and extends increases in the municipal real estate conveyance tax previously scheduled to expire on July 1, 2004. It tightens Connecticut income tax filing requirements for people who do not live in Connecticut but who receive income from Connecticut business partnerships, certain limited liability companies, S corporations, and trusts and estates.

The act allows the treasurer to liquidate more quickly unclaimed property in the state's custody by eliminating required holding periods for such property. It authorizes the state, by June 30, 2005, to issue up to \$60 million in special obligation bonds backed by revenues from abandoned property liquidations if the state needs revenue to support state General Fund programs in FY 2005.

The act changes how proceeds from any sale, lease, or transfer of Fairfield Hills Hospital must be used and directs agencies to spend appropriations for specific

purposes and programs in FY 2005. Finally, it requires reports to the legislature from the Correction Department on communicable and sexually transmitted diseases, the Department of Information Technology on specified items enumerated to the Appropriations Committee, and the Department of Public Works on state-owned office space in the Hartford area.

EFFECTIVE DATE: July 1, 2004, unless otherwise noted below.

FY 2005 APPROPRIATION ADJUSTMENTS (§§ 1-9)

The act adjusts FY 2005 General Fund and certain special fund appropriations for state agencies and programs. Total changes in FY 2005 appropriations for each fund are shown in Table 1:

Table 1: FY 2005 Appropriations By Fund

§§	Fund	FY 2005 Appropriation		
		Prior Law	Act	Change
1	General	\$12,959,785,632	\$13,222,046,726	\$262,261,094
2	Special Transportation	921,676,360	929,340,266	7,663,906
3	Mashantucket Pequot and Mohegan	85,000,000	85,000,000	0
4	Soldiers', Sailors', and Marines	3,485,723	3,626,661	140,938
5	Regional Market Operation	936,467	936,467	0
6	Banking	15,186,508	15,966,962	780,454
7	Insurance	19,552,499	19,547,643	(4,856)
8	Consumer Counsel and Public Utility Control	19,171,466	18,799,316	(372,150)
9	Workers' Compensation Commission	22,807,794	21,084,235	(1,723,559)

FY 2004 FUNDS TRANSFERRED TO FY 2005 (§§10, 48)

The act requires the comptroller, before June 30, 2004, to transfer \$125.3 million in FY 2004 General Fund revenue for use as such revenue in FY 2005. But if the comptroller, before closing the books for FY 2004, finds a General Fund deficit for that year, the act requires a \$25.3 million appropriation the act makes to the Department of Higher Education for higher education state matching grants to be reduced by whatever amount is needed to prevent the deficit. By law, the Department of Higher Education uses the grants to match 50% of eligible private donations to the UConn, Connecticut State University, community-technical college, and Charter Oak College endowment funds.

GOVERNOR'S EXTRAORDINARY RESCISSION AUTHORITY (§ 72)

The act eliminates the governor's authority to make up to \$55 million in deeper-than-normal rescissions in FY 2005 appropriations on or after October 1, 2004 if the state fails to receive at least that amount in extraordinary federal assistance in FY 2005. The authority allowed the governor to reduce total FY 2005 appropriations from any fund or any individual FY 2005 appropriation by up to an extra 5% if he determined (1) there was either a fiscal exigency related to the budget or there were not enough estimated resources to fund all appropriations and (2) his ordinary rescission authority would not be enough to deal with the exigency or shortfall.

INCOME TAX

Property Tax Credit Against the Income Tax (§ 52)

The act increases the maximum property tax credit against the income tax from \$350 to \$500 for tax years starting on or after January 1, 2005. By law, the maximum credit drops by 10% for each \$10,000 of a taxpayer's Connecticut adjusted gross income (10% for each \$5,000 for married people filing separately) above specified levels. Table 2 shows the maximum credits, by filing status, for various income levels under the prior law and the act.

Table 2: Maximum Property Tax Credits for 2005 Tax Year And After

MAXIMUM CREDIT		CT ADJUSTED GROSS INCOME			
		Married Filing Jointly		Single (for 2005 only)	
Prior Law	Act	From	To	From	To
\$350	\$500	\$24,001	\$100,500	\$12,750	\$55,500
315	450	100,501	110,500	55,501	65,500
280	400	110,501	120,500	65,501	75,500
245	350	120,501	130,500	75,501	85,500
210	300	130,501	140,500	85,501	95,500
175	250	140,501	150,500	95,501	105,500
140	200	150,501	160,500	105,501	115,500
105	150	160,501	170,500	115,501	125,500
70	100	170,501	180,500	125,501	135,500
35	50	180,501	190,500	135,501	145,500
0	0	Over \$190,500		Over \$145,500	

MAXIMUM CREDIT		Head of Household		Married Filing Separately	
Prior Law	Act	From	To	From	To
\$350	\$500	\$19,001	\$78,500	\$12,001	\$50,250
315	450	78,501	88,500	50,251	55,250
280	400	88,501	98,500	55,251	60,250
245	350	98,501	108,500	60,251	65,250
210	300	108,501	118,500	65,251	70,250
175	250	118,501	128,500	70,251	75,250
140	200	128,501	138,500	75,251	80,250
105	150	138,501	148,500	80,251	85,250
70	100	148,501	158,500	85,251	90,250
35	50	158,501	168,500	90,251	95,250
0	0	Over \$168,500		Over \$95,250	

The income levels at which the maximum credit reduction starts for singles shown in Table 2 apply to the 2005 tax year only. The income that triggers a credit reduction for single filers is scheduled to increase annually until January 1, 2010, when it reaches \$64,501. EFFECTIVE DATE: July 1, 2004 and applicable to tax years starting on or after January 1, 2005.

Pass-Through Entity Income Tax Filings, Payments, and Group Returns (§§ 54, 55)

The act (1) tightens the income tax filing requirements for people who do not live in Connecticut but who receive income from pass-through entities that do business in, or derive income from, sources in Connecticut and (2) makes filing and tax payment requirements for different kinds of pass-through entities the same. It applies to S corporations; general, limited, and limited liability partnerships; limited liability companies treated as partnerships under federal tax laws; and trusts and estates.

Such entities are as known as "pass-through entities" because they do not pay income taxes themselves but instead pass the tax liability through to their shareholders, partners, and beneficiaries, who must pay personal income taxes on shares of the entity's income they receive. An "S corporation" is a business with no more than 35 shareholders whose income is taxed to its shareholders rather than to a separate corporate entity.

Group Returns. Prior law allowed a partnership (including a trust or estate) or S corporation with nonresident partners or shareholders to file a group tax return for, and pay taxes on behalf of, the nonresident partners or shareholders who choose to participate. The nonresident partners or shareholders who did not participate had to file individual tax returns.

The act extends to partnerships with two or more nonresident partners the requirements that already apply

to S corporations with nonresident shareholders. The requirements are that partnerships either (1) file a group return for those nonresident partners who meet the act's criteria for participating in such a return and who choose to participate or (2) pay taxes at the highest marginal rate (currently 5%) on each nonresident partner's share of income from the business.

Qualifications for Participating in a Group Return.

The act limits the partners, shareholders, or trust beneficiaries who may participate in a group return to those who:

1. have lived outside Connecticut for the entire tax year;
2. have not maintained a permanent home here at any time during the tax year;
3. have no Connecticut-derived income other than from one or more Connecticut pass-through entities, either on their own or with their spouses if they are filing joint federal tax returns for the year;
4. waive their right to claim a personal exemption or personal credit on the Connecticut income tax;
5. are not liable for the Connecticut alternative minimum tax for the year;
6. have the same tax year as the others included in the return; and
7. choose to be included in the return.

An eligible person choosing to be included in a group return must indicate his irrevocable decision by filing a Department of Revenue Services (DRS)-approved election form with the partnership, S corporation, or trust by the 15th of the fourth month after the close of the person's tax year. In making the choice, he waives his right to file for a tax payment extension and expressly agrees to personal jurisdiction in Connecticut for Connecticut tax purposes. The choice is binding on the person and his heirs, successors, assigns, executors, and administrators. The entity must keep the form on file, where it is subject to DRS inspection. The group return must be filed by the 15th of the fourth month following the end of the included partners' or shareholders' taxable year.

The filing of a group return satisfies the separate income tax filing requirements for each participating person, although the commissioner retains the authority to require a separate return from a person who meets the requirements for participating in a group return.

Those who do not meet the act's conditions must still file their own separate returns even if the entity withheld and paid taxes on their behalf. Such a person receives credit for taxes the entity paid, but is not eligible for refunds or credits based on the fact that the entity paid at the highest marginal rate for the year rather than the individual's rate.

Group Return Contents. Under the act, a group return must show (1) exactly the same entity name and address as the entity shows on the informational income tax return it was already required to file (see below) and (2) its taxable year and the taxable year of the included partners or shareholders. The filing must include a schedule showing each included person's:

1. name;
2. address;
3. Social Security number;
4. share of the entity's Connecticut-related separately and nonseparately computed items as defined by federal tax law;
5. share of Connecticut modifications related to the entity's Connecticut-related income, gain, loss, or deduction;
6. income tax, determined by multiplying the total of #4 and #5 by the highest marginal Connecticut income tax rate; and
7. estimated tax paid, if any.

It must be signed by a partner or shareholder with authority to act for all those covered, as indicated on the election forms the partners or shareholders filed.

Tax Payments on Behalf of Nonresident Partners and Shareholders. The act extends to partnerships requirements that already apply to S corporations that all tax payments on behalf of nonresident partners be at the highest marginal tax rate for the year and constitute the partner's tax payment for the year. It allows the partnership to recover the amount of the payment from the partners, as an S corporation already can from covered shareholders. The act also exempts both types of entities from liability to covered partners and shareholders for the payments.

The act requires the entities to pay estimated tax installments and annual income tax payments on behalf of partners or shareholders by the regular income tax due date. They must furnish each partner or shareholder on whose behalf they made tax payments with a DRS-prescribed form recording those payments by the 15th of the third month following the close of the entity's tax year.

Under the act, entities need not make tax payments on a partner's or shareholder's behalf if:

1. his share of the partnership's or S corporation's Connecticut-related income for the year is less than \$1,000;
2. a DRS regulation, ruling, or instruction determines that his income is not subject to the requirements;
3. in the case of a partner, he chooses to be included in an S corporation group return or, in the case of a shareholder, he chooses to be included in a partnership group return; or
4. in the case of a partnership, the partnership (a) is publicly traded and treated as a partnership

under federal tax law and (b) has agreed to file an informational return with DRS reporting the name, address, and Social Security or federal employer identification number of each of its unit holders whose Connecticut-related distributive income for the tax year is more than \$500.

Upper-Tier and Lower-Tier Pass-Through Entity Payments. Under the act, a pass-through entity that is a member of another pass-through entity (“lower-tier” and “upper-tier,” respectively) is subject to the same tax payment requirements on behalf of its members as the upper-tier entity. The act requires DRS to apply the upper-tier entity’s income tax payments on behalf of the lower-tier entity to the income tax payments the lower-tier entity must pay on behalf of its members. This requirement applies to S corporations; general, limited, and limited liability partnerships; and limited liability companies treated as partnerships under federal tax laws, but not to trusts and estates.

Informational Returns. Under prior law, any partnership, trust, or estate with income from Connecticut sources or any S corporation doing business or authorized to do business here had to file an annual informational return with DRS listing its income, gains, losses, and deductions. The return also had to list all the entity’s partners or shareholders, both residents and nonresidents, who were entitled to a share of its net income and the share distributed to each one, together with identifying information about each partner or shareholder (name, address, and Social Security or federal employer ID number) and other information the DRS commissioner required by regulation or instructions.

The act eliminates the requirement that trusts and estates file the informational return and changes the criterion for imposing the filing requirement on S corporations. It requires S corporations to file an informational return if they have Connecticut-related income. Under prior law, only S corporations doing business or authorized to do business here had to file.

In addition to previously required information, the act requires partnerships and S corporations to file the amount of each resident and nonresident partner’s or shareholder’s share of (1) total and Connecticut-related separately and nonseparately computed items for federal tax purposes and (2) Connecticut modifications relating to total and Connecticut-related income, gain, loss, or deductions. It also requires the entity to attach a list of the names and Social Security numbers of the nonresident partners or shareholders included in its group return for the same tax year.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2004. The group return filing requirements also apply to estimated

composite income tax payments that must be made on or after the act’s effective date.

ABANDONED PROPERTY

Treasurer’s Sale of Abandoned Property (§ 53)

The act eliminates required waiting periods before the state treasurer may sell abandoned property in the state’s custody. Under prior law, the treasurer had to wait at least one year after receiving most types of unclaimed property before selling it and, unless she found it to be in the state’s best interest to sell sooner, to wait at least three years before selling any abandoned business ownership interests, such as securities. This act allows the treasurer to liquidate all types of unclaimed property as soon as she receives it and expressly permits her immediately to liquidate all unclaimed securities she is currently holding.

The act also eliminates the right of anyone who claimed securities before the end of the three-year waiting period to the greater of either the securities’ sale proceeds or their market value at the time of the claim. Instead, under the act, as under prior law for a claim made after the three-year waiting period, the claimant is entitled either to the securities themselves, if they are still in the treasurer’s possession, or to the proceeds of their sale no matter when he files his claim.

EFFECTIVE DATE: Upon passage

Abandoned Property Bonds (§§ 56-63)

The act authorizes the State Bond Commission, by June 30, 2005, to issue up to \$60 million in special obligation abandoned property fund bonds, plus the costs of financing and issuing the bonds. The bond proceeds must go into the General Fund to support state programs. Before the bonds are issued, the state treasurer and the OPM secretary must find that issuance is necessary to support state General Fund programs. The maximum bond term is seven years. The bond interest and principal are state income tax-free.

The act establishes a Special Abandoned Property Fund to repay the bonds. It requires the treasurer to deposit into the fund the cash proceeds realized from abandoned property to which the state treasurer takes custody under the law. Investment earnings become part of the fund assets and any fund balance remaining at the end of the fiscal year must be carried forward to the next year.

The treasurer must deposit all receipts from abandoned property in the fund until the bonds are paid off. The act gives debt service for the bonds first call on the state’s receipts credited to and held in the fund and pledges the fund revenues to repay the bonds. The state and its political subdivisions have no direct or

contingent general obligation to repay abandoned property fund bonds and the bonds are not subject to statutory limits on the state's bond debt. The act specifies what the abandoned property bond proceedings and covenants may contain; establishes liens and other security; and makes standard state bond financing, issuing, refunding, investment, and other requirements apply to them. It also eliminates a special nonlapsing unclaimed property account that used to administer unclaimed property program and instead requires the costs of administering the program to be paid from the new abandoned property fund.

EFFECTIVE DATE: Upon passage

MUNICIPAL REAL ESTATE CONVEYANCE TAX (§ 51)

The act (1) extends the expiration date of a temporary increase in the municipal real estate conveyance tax rate from 0.11% to 0.25% from July 1, 2004 to July 1, 2005 and (2) makes permanent an option allowing 18 towns to add 0.25% to the municipal tax rate. Under prior law, all higher rates were scheduled to expire on July 1, 2004.

The towns eligible to exercise the option of adding a quarter point to their real estate conveyance tax rate are: Bloomfield, Bridgeport, Bristol, East Hartford, Groton, Hamden, Hartford, Meriden, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Southington, Stamford, Waterbury, and Windham.

EFFECTIVE DATE: Upon passage

FAIRFIELD HILLS HOSPITAL SALES PROCEEDS (§§ 69, 70)

The act changes how the proceeds from the sale, lease, or transfer of Fairfield Hills Hospital must be used. Instead of depositing them in a nonlapsing fund for site acquisition, capital development, and infrastructure for services to people with mental retardation or psychiatric disabilities, the act requires proceeds to be allocated to the Department of Mental Health and Addiction Services and divided equally between General Fund accounts for the Community Mental Health Strategy Board and mental health services grants.

EFFECTIVE DATE: Upon passage

CONNECTICUT COMMISSION ON ARTS, TOURISM, CULTURE, HISTORY, AND FILM (CATCH-F) REVENUE (§ 71)

The act eliminates requirements that (1) the DRS commissioner segregate \$20 million in lodgings tax receipts in FYs 2004 and 2005 to fund CATCH-F and (2) CATCH-F allocate specified amounts to the five

regional tourism districts and other specified organizations and projects out of the funds it receives in FY 2004.

EFFECTIVE DATE: Upon passage

PA 04-258—sHB 5689

Appropriations Committee

Public Health Committee

AN ACT CONCERNING STATE EXPENDITURES FOR SOCIAL SERVICES PROGRAMS

SUMMARY: This act makes many changes in social services programs, including:

1. repeal of the ConnPACE estate recovery and asset test laws;
2. repeal of Medicaid and State-Administered General Assistance (SAGA) cost-sharing;
3. reopening of enrollment in the child care subsidy program (Care 4 Kids) and modification of priorities for admission;
4. reopening of state-funded legal immigrant assistance programs that had been closed to new applicants since June 30, 2003;
5. expansion and modification in the preferred drug list to be developed for state medical assistance programs;
6. several new pilot programs that help the elderly and modifications in one recently begun pilot;
7. increases in rates the state pays to various types of hospitals and other institutions and providers for people who need state assistance;
8. a reduction in the pharmacy dispensing fee for state medical assistance programs; and
9. institution of a look-back period for SAGA medical assistance applicants.

EFFECTIVE DATE: July 1, 2004, except as indicated below.

INCREASE IN MEDICAID RATES FOR FREESTANDING CHRONIC DISEASE HOSPITALS (§ 1)

The act increases the Medicaid rates for freestanding chronic disease hospitals by 2% as of July 1, 2004.

ICF-MR RATE INCREASE (§ 2)

The act postpones the FY 2005 rate increase for intermediate care facilities for the mentally retarded from July 1, 2004 to October 1, 2004 and changes the increase from 0.75% to 5%.

INPATIENT HOSPITAL RATE INCREASE (§ 3)

The Department of Social Services (DSS), through the state's Medicaid program, reimburses hospitals for about 80% of their Medicaid-covered inpatient services based on each hospital's "target amount per discharge." This amount is based on the formula the federal Medicare program uses to calculate allowable hospital costs per discharge that Medicare will cover, using a 1982 base year. The target amount is adjusted upwards by a certain federally prescribed percentage (up to 10% more).

Prior law required the target amount to be updated to 62.5% of a hospital's actual allowable cost per discharge based on its 1999 cost report filing, if that amount was higher than the target amount for the October 1, 2000 rate period plus the extra federal adjustment. (According to DSS, approximately two-thirds of the hospitals qualified for the adjustment.) But for the rate period starting October 1, 2001, DSS could not apply an adjustment to the target amount.

The act establishes minimum target amounts per discharge for each of the next three years. The minimum for April 1, 2005 through March 30, 2006 is \$3,750. Effective April 1, 2006 and April 1, 2007, the minimums are \$4,000 and \$4,250, respectively. This effectively means that inpatient rates remain frozen until April 1, 2005. Then, any hospitals with target amounts below the minimum will be paid at the minimum for each of those years.

The act also ends the freeze on annual adjustments one year sooner, effective October 1, 2004. This means DSS would be obliged to make adjustments for the rate year that begins October 1, 2004. (But Section 34 of PA 04-2, May Special Session, extends the freeze on adjustments through March 31, 2008.)

MEDICARE-MEDICAID DUALY ELIGIBLE MANAGED CARE PILOT (§ 4)

The act requires the DSS commissioner, to the extent permitted by federal law, to amend the Medicaid state plan to establish a pilot program for up to 500 Medicare-Medicaid dually eligible elderly and disabled people who choose to participate. The pilot must demonstrate the feasibility and cost-effectiveness of delivering comprehensive health insurance coverage in a managed care setting to these people. The act allows the commissioner to include services in the pilot program that are not presently covered under Medicaid or make other modifications to encourage voluntary participation.

EFFECTIVE DATE: Upon passage

PARTICIPATION LIMITS FOR PRIVATE ASSISTED LIVING PILOTS (§§ 5, 6)

The act sets a combined overall limit of 75 participants in two private assisted living pilot programs (one Medicaid, one purely state-funded) and makes a technical change. Prior law had set separate caps of 50 for the Medicaid pilot and 25 for the state-funded pilot. The programs help pay for assisted living services (but not room and board) for people living in private assisted living facilities who have used up their own resources.

PHARMACY BENEFITS MANAGER CONTRACT (§ 7)

The act allows the DSS commissioner to contract with a pharmacy benefits manager or a Medicaid managed care organization to provide prescription drug coverage to medical assistance recipients receiving services in a managed care setting.

PREFERRED DRUG LIST EXPANSION AND APPLICABILITY TO DSS PROGRAMS (§§ 8, 43)

By law, DSS must establish a preferred drug list for Medicaid, ConnPACE, and SAGA in consultation with the Medicaid Pharmaceutical and Therapeutics Committee. Prescriptions for drugs not on the list will need prior authorization except for mental health-related and antiretroviral drugs. However, as a first step, in FY 2004, the law limited the list to three classes of drugs: proton pump inhibitors and two others to be chosen.

This act:

1. requires adoption of different preferred drug lists for different programs instead of just one list;
2. requires DSS, after entering into a contract with an entity to provide drug coverage for managed care medical assistance recipients as allowed in § 7 of the act, to expand the preferred drug list for use in the HUSKY A and B programs;
3. requires DSS, by June 30, 2005, in consultation with the Medicaid Pharmaceutical and Therapeutics Committee, to expand the drug lists to include other classes of drugs (except mental health-related and antiretroviral drugs) in order to achieve savings reflected in DSS' FY 2005 appropriations for the various program components (Section 43 of this act adds medications used to treat diabetes, asthma, or cancer to the exceptions but PA 04-2, May Special Session, § 41 again removes the exception for these three types of medications);

4. allows the DSS commissioner to contract with a pharmacy benefits organization or a single entity qualified to negotiate with pharmaceutical manufacturers for supplemental rebates available under federal law (42 U.S.C.A. § 1396r-8(c)) for the purchase of drugs on the preferred drug list; and
5. eliminates several obsolete statutory deadlines and makes technical changes.

PRESCRIPTION COPAY REPEAL AND LOOK-BACK FOR SAGA MEDICAL ASSISTANCE APPLICANTS (§ 9)

The act (1) eliminates the \$1.50 copayment for prescription drugs under the SAGA medical assistance program and (2) institutes a three-month “look-back” period for SAGA medical assistance applicants. Specifically, it renders a person ineligible for SAGA medical assistance if he assigns, transfers, or otherwise disposes of property for less than fair market value during the three months before he applies for assistance. The ineligibility period is determined by dividing the fair market value of the property, less any consideration received in exchange for it, by \$500. (Presumably, the resulting figure is the number of months of ineligibility.) The ineligibility period begins the month in which the applicant is determined otherwise eligible for assistance.

The act establishes a presumption that any such disposition of property was made to qualify for assistance unless the person provides convincing evidence that it was done exclusively for some other purpose.

The act also authorizes the DSS commissioner to implement policies and procedures for the SAGA medical assistance program while in the process of adopting them in regulation, provided she publishes notice in the *Connecticut Law Journal* within 20 days of implementing them. The policy and procedures are valid until final regulations are adopted.

PHARMACY DISPENSING FEE REDUCTION (§ 10)

The act reduces the pharmacies’ dispensing fee for DSS medical assistance programs from \$3.30 to \$3.15 per prescription. The change applies to drugs provided under the Medicaid, SAGA, General Assistance (GA), ConnPACE, and Connecticut AIDS Drug Assistance programs. (But PA 04-2, May Special Session, § 85 exempts prescription drugs under SAGA from the statutory \$3.15 dispensing fee requirement. By law, SAGA medical assistance must be reorganized as a managed care program using federally qualified health centers or other providers and the pharmacy dispensing

fee for that program is to be negotiated in a separate contract.)

CONNPACE ESTATE RECOVERY REPEAL (§ 11)

The act repeals provisions adopted in 2003 that allowed the state to recoup ConnPACE benefits it pays from the estates of deceased program participants. Although the provisions applied to deaths on or after September 1, 2003 and allowed recoupment of benefits the person received on or after July 1, 2003, they were never implemented.

EFFECTIVE DATE: Upon passage

CONNPACE ASSET TEST REPEAL (§ 12)

The act repeals an asset limit for ConnPACE participation of \$100,000 for single people and \$125,000 for married couples.

Under prior law, adopted in 2003, all new and renewal applications had to show the applicants’ assets, and people over the limit were denied participation in ConnPACE. The types of counted assets were the same as under the Connecticut Home Care Program for Elders and included only liquid assets, while the value of a home and certain other property was excluded.

EFFECTIVE DATE: Upon passage

TIMING OF FIRST TEMPORARY FAMILY ASSISTANCE (TFA) BENEFIT (§ 13)

The act prohibits DSS from granting TFA to applicants before they attend the initial scheduled employment services assessment interview and participate in the development of an employment services plan. But DSS may not deny TFA to an applicant when it schedules the appointment more than 10 business days after the person applies. Likewise, it may not deny assistance in cases where the Labor Department does not complete an employment services plan for the applicant within 10 days of the date the applicant attends the employment services assessment interview. (This is typically scheduled when a family first applies for assistance.) This prohibition does not apply to families who are exempt from the Jobs First Employment Services program. (Section 35 of PA 04-2, May Special Session, prohibits the delay, rather than the denial, of benefits in the above-described situations. This will allow DSS to deny benefits when applicants are otherwise ineligible for them.)

The act also requires the DSS commissioner to refer any applicant denied TFA, who may be in need of emergency benefits, to other DSS or community services that may be available.

SECTION 8 HOUSING VOUCHERS (§ 14)

The act requires any entity in the state that administers federal Section 8 housing choice vouchers, at least two weeks before opening its waiting list, to notify (electronically or in writing) the operator of a DSS-designated website of (1) the date the waiting list for new voucher applications opens; (2) how to apply for a voucher; and (3) the date, if any, on which the waiting list will close.

Under the act, the website operator must (electronically or otherwise) make the information available to the public, Infoline of Connecticut, and other unspecified organizations. Infoline is a telephone assistance line that provides information about community services, referrals to human services, and crisis intervention.

The federal department of Housing and Urban Development (HUD) Section 8 housing choice voucher program is the main federal program for helping low-income families with rent in private housing (24 CFR Part 982). Housing authorities administer the vouchers either (1) under contract with HUD or (2) as subcontractors for the statewide program overseen by DSS. In either case, people apply to the housing authority for a voucher.

LEGAL IMMIGRANT PROGRAMS (§§ 15-18)

The act reopens the state-funded legal immigrant programs to new applicants who are excluded from federal programs. These state programs include solely state-funded TFA, cash assistance under SAGA, state-funded medical assistance (equivalent to Medicaid, SAGA medical, or HUSKY B, as appropriate), the Connecticut Home Care Program for Elders, and state-funded food assistance equivalent to the federal Food Stamp Program.

Under prior law, new applicants were not accepted in these programs as of June 30, 2003.

PLACEMENT OF DEPARTMENT OF CHILDREN AND FAMILIES (DCF) CHILDREN OUTSIDE CONNECTICUT (§ 19)

The act requires the DCF commissioner to ensure that a department representative makes in-person visits at least every two months to assess the well-being of children she places in out-of-state residential facilities.

CHILDREN'S TRUST FUND COUNCIL AND NURTURING FAMILIES PROGRAM (§ 20)

The act requires the Children's Trust Fund Council and DCF to enter into an agreement whereby DCF transfers \$883,000 of its FY 2005 appropriation to the

council. The council must use these funds to expand the Nurturing Families Program in Hartford and for staff and expenses associated with the expansion.

TRANSFER OF FUNDS TO REDUCE DEPARTMENT OF MENTAL RETARDATION (DMR) WAITING LIST (§ 21)

The act transfers \$1 million of the State Department of Education's FY 2005 appropriation for magnet schools to DMR's Community Residential Services account to provide residential services to individuals on DMR's waiting list.

CONVERSION OF NONPROFIT HOSPITALS (§§ 22-24)

The act modifies the law on the sale of nonprofit hospitals to for-profit entities by:

1. modifying a condition that, if present, requires the attorney general to disapprove a proposal as not in the public interest and
2. qualifying an existing condition that requires the Office of Health Care Access (OHCA) to deny a proposal involving services to the uninsured.

The law requires each short-term acute care general or children's hospital to report annually to OHCA concerning its operations and specifies various information that must be reported. The act adds to the required information a report of all transfers of assets or operations or changes of control involving its clinical or nonclinical services or functions from the hospital to a person or entity organized or operated for profit.

Attorney General Approval of a Proposal

The law requires the attorney general and OHCA commissioner to approve a completed application, with or without modification, or deny it within a specified time period. The attorney general must disapprove the proposal as not in the public interest if any of a series of specific conditions are present. One of these conditions is that a sum equal to the fair market value of the hospital's assets is not being transferred to one or more people selected by the Superior Court who are not affiliated through corporate structure, governance, or membership with either the nonprofit hospital or the purchaser.

The act specifies that this type of transfer is allowed if the nonprofit hospital continues to operate on a nonprofit basis after the transaction and the sum is transferred to the nonprofit to provide health services.

OHCA Approval

The law directs OHCA to deny an application unless the commissioner makes certain statutorily required findings. One of these is that the purchaser is committed to providing health care to the uninsured and underinsured. The act qualifies this condition by specifying that it applies in a situation where the asset or operation to be transferred provides or has provided health care services to the uninsured or underinsured.

CHILDREN'S TRUST FUND COUNCIL PERSONNEL (§ 25)

The act makes the law conform to practice by giving the Children's Trust Fund Council specific authority to employ an executive director and any necessary staff within available appropriations and for the staff to be part of the state classified service.

VETERANS' HOME AND HOSPITAL (§ 26)

The act allows the veterans' affairs commissioner, on behalf of any facility the commissioner operates that is established for the care of veterans, to apply to the Department of Public Health (DPH) for a license as a nursing home or an assisted living services agency. If the commissioner applies for such a license, the act allows the Veterans Home and Hospital to keep its existing chronic disease hospital license.

The act requires DPH to process any such application in an expedited manner. It also exempts any Veterans Home project undertaken pursuant to such a license application from other statutes requiring a certificate of need application and approval otherwise applicable to nursing home services such as beds, additions, and capital expenditures (see BACKGROUND).

TREATMENT OF CHILD SUPPORT INCOME FOR TFA FAMILIES (§ 27)

The act makes an accounting change in the way DSS counts current child support it collects on behalf of families receiving TFA. Previously, DSS disregarded the first \$50 of current child support and passed all of it through to the family. (Collected past-due support does not go to TFA families.) It then reduced the family's TFA benefit by the amount passed through, less the \$50. Under the act, DSS continues to disregard and pass through the first \$50. But it cannot count the additional amount in calculating benefits. Instead, DSS must collect and keep the additional support and consider it reimbursement for TFA provided to the family. The net amount the family receives is unchanged. (By law, any TFA received by someone over the age of 18 is

considered recoverable.) But, under the act, if current child support collected exceeds the family's monthly TFA benefit, plus \$50, the excess must be paid directly to the family and be considered income in benefit calculations.

By paying higher TFA amounts than it previously did, DSS can make higher maintenance of effort (MOE) claims as required under the federal Temporary Assistance for Needy Families (TANF) law. (MOE essentially requires states to show that they have maintained a certain level of state funding for welfare-related programs.)

EFFECTIVE DATE: Upon passage

NURSING HOME DRUG RETURN PROGRAM PENALTY (§ 28)

The act changes the penalty for nursing homes that fail to return unused drugs under the nursing home drug return program from a flat \$30,000 fine for each incident of noncompliance to a fine of not more than \$30,000 for each such incident. It also makes a technical change.

Under the nursing home drug return program, nursing homes must return certain unused prescriptions (individually packaged unit dose medications for drugs on a list the DSS commissioner establishes) for their Medicaid residents to the pharmacies that dispense them for resale.

MISCELLANEOUS APPROPRIATIONS, TRANSFERS, AND CARRY FORWARDS (§§ 29-33, 35)

The act :

1. appropriates \$75,000 in FY 2005 to the Department of Public Health for a school-based health clinic in Norwich,
2. transfers \$75,000 from DCF's FY 2005 budget for Community Based Services to DSS for Teen Pregnancy Prevention,
3. appropriates \$50,000 in FY 2005 to UConn for the Veterinary Diagnostic Laboratory, and
4. requires that \$250,000 of DSS' FY 2004 appropriation for Safety Net Services be carried forward to FY 2005 for the Employment Success Program.

It carries forward up to \$60,000 appropriated to the Department of Mental Health and Addiction Services (DMHAS) for FY 2004 for Housing Supports and Services and makes it available for the same purposes in FY 2005.

The act also carries forward (1) up to \$51,900 of unspent funds appropriated to the Office of the Chief Medical Examiner (CME) in FY 2004 for Other Expenses and makes them available for case

management in FY 2005 and (2) it carries forward unspent FY 2000 funds for equipment for the CME in FY 2005.

BEHAVIORAL HEALTH SERVICES FOR ACTIVE DUTY RESERVISTS AND THEIR DEPENDENTS (§ 34)

The act requires DMHAS, in collaboration with DCF, to provide transitional behavioral health services for members of a reserve component of the U.S. Armed Forces who have been called to active service for Operation Enduring Freedom or Operation Iraqi Freedom and for their dependents. These transitional services must be provided as long as no Department of Defense coverage for them is available or the member is not eligible for the services through the Department of Defense. The services must continue until an approved application is received from the federal Department of Veterans' Affairs and coverage is available to the members and their dependents.

FAIRFIELD HILLS HOSPITAL FUNDS

PA 04-216, (the budget) § 70 requires any moneys received by the state from the sale, lease, or transfer of all or part of Fairfield Hills Hospital to be allocated to DMHAS and divided equally between the General Fund accounts for the Community Mental Health Strategy Board and Grants for Mental Health Services.

The act, regardless of PA 04-216, requires the portion of money the state receives from the sale, lease, or transfer of all or part of Fairfield Hills Hospital that the budget designates for mental health services grants to be deposited in a separate, nonlapsing account in the General Fund. It designates this account as the "Mental Health Services Grants" account and specifies that it must also contain any other money required by law to be deposited there. It also requires the money in the account to be spent as provided by law.

CHILD CARE SUBSIDY PROGRAM (§ 37)

The act requires DSS to open enrollment for its child care subsidy program (Care 4 Kids) and to administer the program within existing available budgetary resources.

It also adds one group of people to whom DSS must give priority for these subsidies, and codifies another. It makes working families whose TFA was discontinued not more than five years before they apply for the child care subsidy a priority group for the subsidies and places in statute as a subsidy priority group TFA recipients who are working or are engaged in Jobs First employment activities. Under DSS regulations, these TFA families are already first in line

for subsidies, followed by working parents whose cash benefits were discontinued within six calendar months of applying for child care. By law, teen parents, low-income working families, and certain others already receive priority over others in the subsidy program.

APPEALS OF SAGA DECISIONS (§ 38)

Under prior law, applicants and recipients of SAGA (both cash and medical assistance) who were aggrieved by a DSS commissioner decision could request administrative hearings. The act instead permits applicants for SAGA cash or medical assistance who are denied benefits, or recipients whose assistance is terminated or modified to request administrative hearings. But SAGA medical assistance recipients who seek a review of a denial of coverage for specific medical services must first exhaust the grievance process that is available by law. (Although neither prior law nor the act made provision for a grievance procedure, § 87 of PA 04-2, May Special Session, permits the managed care organizations that contract with DSS to run the SAGA medical assistance program to have internal grievance procedures.)

The act eliminates the provisions requiring DSS to (1) continue providing medical assistance to recipients while their appeals are pending and (2) provide no assistance while any applicant's or cash assistance recipient's appeal is pending. DSS regulations provided for ongoing assistance, both cash and medical, for SAGA recipients who appealed decisions to terminate benefits pending the outcome of a hearing.

NURSING HOME ACQUISITION (§ 39)

Existing law prohibits acquisition of nursing homes for five years by a nursing home operator who has violated the nursing home laws or had nursing home problems related to Medicare and Medicaid. This applies to an operator with four civil penalties imposed by DPH over two years for nursing home violations. The prohibition against further acquisition also applies to operators who have had sanctions imposed by Medicare or Medicaid or have had their provider agreements for these programs terminated or not renewed.

Under the act, for any application for acquisition of a nursing home filed after July 1, 2004, the potential nursing home licensee or owner must submit in writing a change in ownership application for that facility. The application must include whether the potential owner or licensee (1) has had any, instead of four civil penalties imposed by DPH or by another state during a two-year period or (2) has had, in any state, sanctions imposed by Medicare or Medicaid or had provider agreements terminated or not renewed. Under the act, it appears that

if any of these conditions is present, the five-year prohibition on further acquisition continues to apply.

Notwithstanding these limitations, the act allows the DPH commissioner, for good cause, to permit the acquisition of another nursing home by a potential licensee or owner before the five-year period expires.

100-PERSON ELDERLY PERSONAL CARE ASSISTANCE PILOT PROGRAM (§§ 40-41)

The act requires the DSS commissioner, within available appropriations, to establish and operate a state-funded pilot program until June 30, 2006 for up to 100 eligible seniors to receive consumer-directed personal care assistance (PCA) as an alternative to regular home health services in order to avoid institutionalization. It also requires the commissioner to apply for a federal Medicaid waiver to include the PCA pilot in the Medicaid-funded portion of the Connecticut Home Care Program for Elders (CHCPE) and specifies that the number of pilot program participants cannot exceed 100 people. (CHCPE provides home health care and related services through home health agencies to seniors who qualify medically and financially.)

To qualify for the pilot, seniors must be age 65 or over and meet eligibility requirements for CHCPE. The act permits recipients' relatives, other than spouses, to act as personal care assistants in this pilot. Under the act, the average annual cost to the state for PCA services per recipient in the pilot cannot exceed the average annual cost to the state per recipient of home health services under CHCPE.

The act allows the commissioner or her agent to require pilot participants to disclose if a personal care assistant is a nonspousal family member. It requires the commissioner or her agent to (1) monitor provision of services under the pilot and (2) ensure the program's cost-effectiveness. The commissioner must establish the maximum allowable rate to be paid for PCA services in the pilot program, but she may set a separate, lower rate for nonspousal family members providing these services if she deems it necessary to ensure cost-effectiveness and to conduct the pilot within available appropriations.

By January 1, 2006, the commissioner must report on the pilot, including information on the quality of services, to the Appropriations, Human Services, and Aging committees and other entities specified in existing law.

PCA services are a "consumer-directed" alternative to nursing homes or home care through an agency. In such a program, the client chooses his own personal care assistant (also sometimes called a personal care attendant) to help him with personal care and activities of daily living, such as dressing, eating, bathing, using the toilet, or transferring from a bed to a chair. The client employs, trains, supervises, and may fire the

attendant, but a financial intermediary takes care of the paperwork.

EFFECTIVE DATE: July 1, 2004, but upon passage for the requirement that the commissioner apply for a Medicaid waiver to include the pilot in the Medicaid portion of CHCPE.

EFFECTIVE DATE CHANGE (§ 42)

The act makes effective upon passage, instead of October 1, 2004, PA 04-81, which allows a licensed home health care agency that does not meet certain staffing requirements to provide hospice services in a rural town under a Department of Public Health waiver. (PA 04-2, May Special Session, § 111, makes the same change.)

EFFECTIVE DATE: Upon passage

HUSKY A/MEDICAID COST SHARING REPEALERS (§ 44)

The act repeals several provisions pertaining to Medicaid cost-sharing. It eliminates:

1. maximum co-payments of \$1.50 per prescription and \$3 per medical service;
2. a requirement that DSS seek federal approval to allow pharmacies to deny Medicaid recipients their prescriptions for documented and continuous failure to pay co-payments;
3. a requirement that managed care organizations assess monthly premiums on families;
4. a requirement that this cost-sharing be applied to families not in managed care plans;
5. a requirement that DSS run its Medicaid managed care program (HUSKY A) so that the plan of services would be substantially similar to the State Employee Non-Gatekeeper POE Plan;
6. the DSS commissioner's authority to deny or discontinue coverage to recipients who were two months late paying their premiums; and
7. a requirement that DSS get federal approval for all of these changes.

BACKGROUND

Related Act

PA 04-169 renames the Veteran's Home and Hospital as the Veterans' Home, makes more veterans eligible for admission by eliminating war service as a criterion for admission, and makes other related changes.

PA 04-8—SB 286*Banks Committee***AN ACT IMPLEMENTING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO VARIOUS STATUTES RELATIVE TO THE BANKING LAW OF CONNECTICUT****SUMMARY:** This bill makes several technical changes to the banking statutes.

EFFECTIVE DATE: Upon passage

PA 04-14—sHB 5409*Banks Committee***AN ACT CONCERNING CHECK CASHING SERVICES AND MONEY TRANSMISSION****SUMMARY:** This act requires limited liability companies applying for check cashing or money transmission licenses to include specific information in their applications and notify the banking commissioner before making certain changes. It requires the commissioner, if he determines that a check filed with his office to pay license, application, or certain other fees has been dishonored, to suspend the license automatically and give the licensee notice and an opportunity for a hearing. It expands money transmission laws to apply to stored and monetary value, in addition to money. And it increases surety bond requirements and allows surety companies to cancel money transmitters' surety bonds at any time by giving notice to the licensee and the commissioner.

EFFECTIVE DATE: October 1, 2004, except for the provisions applying money transmission laws to stored and monetary value and allowing surety companies to cancel their bonds, which take effect upon passage.

CHECK CASHING LICENSES (§§ 1, 2)*Limited Liability Company Licensees*

The act requires a limited liability company applying for a check cashing license to list on its application the names and addresses of each of its managers and authorized agents. It requires the commissioner, as part of the licensing process, to investigate whether each such manager and authorized agent is in all respects properly qualified and of good character.

Changes to Licenses and Applications

The act specifies that the application a licensee must file with the commissioner to change its location must be filed prior to the location change, and the licensee also must receive the commissioner's approval. Prior law required only that the licensee file the application and accompanying location transfer fee. The act eliminates requirements that (1) licensees file a new application and pay a fee when changing their type of facility and (2) general facility licensees obtain the commissioner's approval before changing their approved days and hours. The law specifies the minimum number of days and hours that general facilities must be open for business. The act also requires applicants and licensees to notify the commissioner promptly, in writing, of any change in the information provided in their initial or renewal application for licensure or most recent license renewal.

License Suspension

The act requires the commissioner, if he determines that a check filed with his office to pay an application or license fee has been dishonored, to suspend automatically a check cashing service's license or approval or a renewal license that has been issued but is not yet effective. He must give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions. The act also requires the commissioner, if he determines a check filed with his office to pay a location transfer fee has been dishonored, to suspend automatically the location transfer approval pending revocation of the approval and an opportunity for a hearing on that action.

MONEY TRANSMISSION LICENSES*Applications (§ 4)*

The act requires a limited liability company's application to engage in the business of money transmission to include the managers' (1) names, (2) home addresses, and (3) history of material litigation and criminal convictions for the five years prior to the application date. The application must also provide sufficient information about the managers' names and addresses, in addition to those of other required parties, as the commissioner deems necessary. The act also requires all applicants and licensees, regardless of the type of entity, to notify the commissioner promptly, in writing, of any change in the information provided in their initial or renewal application for licensure or most recent license renewal.

Fees (§§ 5, 6)

The act prohibits the commissioner from issuing a money transmission license to anyone who has not paid the required investigation and license fees. By law, an investigation fee is \$500, and initial and renewal license fees are \$1,000.

If the commissioner determines that a check filed with his office to pay an investigation or license fee has been dishonored, the act requires him automatically to suspend a money transmission renewal license that has been issued but is not yet effective. He must give the licensee notice of the automatic suspension pending proceedings for refusal to renew the license and an opportunity for a hearing on those actions.

Bond Requirement (§§ 3, 7)

By law, money transmission licensees must file a surety bond with the commissioner. Prior law based the bond amount on an applicant's or licensee's average daily balance of outstanding Connecticut payment instruments or a licensee's average weekly amount of money or equivalent transmitted. The act specifies that the average weekly transmission amount is based on the amount of money or monetary value sent or received, whichever is greater. It defines "monetary value" as a medium of exchange, whether or not redeemable in money.

The act also allows the surety company to cancel the bond at any time by written notice to the licensee stating the date the cancellation takes effect. The notice must be sent by certified mail at least 30 days before the cancellation date. The surety bond may not be cancelled unless the surety company also notifies the commissioner in writing at least 30 days before the cancellation date. The commissioner must automatically suspend the license on the cancellation date, unless the surety bond has been replaced or renewed, all of the bond principal has been invested, the bond has been replaced in part and the remainder of the principal has been invested, or the licensee has ceased business and voluntarily surrendered the license. The act requires the commissioner to give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions.

Investment Requirement (§ 3, 8)

By law, a money transmission licensee must maintain permissible investments with a value of at least the aggregate amount of its outstanding payment instruments. The act requires these investments to equal at least the aggregate amount of the licensee's outstanding payment instruments plus its stored value.

It defines "stored value" as monetary value evidenced by an electronic record.

The act also requires the licensee's investments, which the law deems held in trust for the benefit of successful claimants against the licensee, to ensure the faithful performance of its obligations with respect to the receipt, handling, transmission, or payment of monetary value. The investments already must guarantee the licensee's faithful performance of its obligations with respect to money.

Net Worth Requirement (§ 9)

Under prior law, a money transmission licensee had to have a net worth of at least \$500,000. The act allows the commissioner to set a higher amount, determined in accordance with generally accepted accounting principles, for licensees engaging in the business of money transmission by issuing stored value.

Fee-Sharing (§ 10)

By law, the commissioner may enter into agreements with other state or federal supervisory agencies or affiliated organizations for examinations, examination fees, and supervision of people engaged in the business of money transmission. The act allows the agreements to include provisions regarding the assessment or sharing of fees for such examination or supervision.

Annual Reports (§ 11)

By law, money transmission licensees must file with the commissioner annual reports of their financial information, including a list of investments and the dollar amounts of their aggregate outstanding Connecticut payment instruments. The act also requires them to disclose the dollar amounts of their stored value.

Exempt Entities (§ 12)

The law exempts from the money transmission statutes financial institutions that do not engage in the business of money transmission except with other financial institutions. The act clarifies that this exemption applies to such financial institutions transmitting monetary value as well as money.

BACKGROUND*Related Act*

PA 04-69, An Act Concerning Consumer Credit Licensees and Creditors' Collection Practices, requires

the banking commissioner automatically to suspend the license of several regulated entities if their license or application fee checks are dishonored, and to give them notice and an opportunity for a hearing.

PA 04-23—sSB 363

Banks Committee

AN ACT CONCERNING CONVERSIONS AND REORGANIZATIONS OF MUTUAL SAVINGS BANKS

SUMMARY: When a mutual savings bank converts to a capital stock bank it must file a conversion plan with the banking commissioner. This act requires that the conversion plan be approved by (1) a majority of the converting bank's corporators, provided the bank must have at least 25 corporators at the time (unless the banking commissioner allows otherwise based on the bank's charter or certificate of incorporation) and (2) a majority of the bank's independent corporators (corporators who are not employees, officers, directors, trustees, or significant borrowers of the mutual savings bank), who must make up at least 60% of all corporators. The approval must be obtained at a meeting held in accordance with the bank's charter, certificate of incorporation, or bylaws. If a mutual savings bank reorganizes into a mutual holding company, the act requires approval by the same numbers and proportions of corporators at a similar meeting.

The act requires a converting or reorganizing mutual savings bank, before the meeting for approval, to provide the corporators with information on the conversion plan. It must be filed with and approved by the commissioner before distribution and include disclosures summarizing the (1) conversion or reorganization plan, as applicable; (2) distribution of shares; and (3) compensation plans proposed for management. The bank also must provide the commissioner with the following information on the corporators eligible to vote at the meeting to approve the conversion or reorganization plan:

1. the number of corporators who are (a) not bank employees, officers, directors, or trustees; (b) employees, but not officers, directors, or trustees; and (c) officers, directors, or trustees;
2. a description of any loan relationships, outstanding within the five years before the meeting, between the mutual savings bank and any of its corporators who are not also employees, officers, directors, or trustees; and
3. a description of any commercial relationships (sale or lease of real or personal property or provision of commercial services), other than

the loan relationships with corporators described above, in existence within five years before the meeting between the bank and any of the corporators who are not bank employees, officers, directors, or trustees.

The converting or reorganizing bank also must file with the commissioner a certification that the corporators approved the plan at the required meeting.
EFFECTIVE DATE: Upon passage

PA 04-30—sHB 5246

Banks Committee

Transportation Committee

AN ACT CONCERNING THE NOTIFICATION OF LIENHOLDERS OF MOTOR VEHICLES

SUMMARY: This act extends to lienholders the requirement that owners or keepers of garages or storage facilities where towed vehicles are housed notify owners five days before selling their vehicles. The law specifies criteria under which they can sell the vehicles.

The act requires lienholders to receive the same notice that must be given to motor vehicle owners whose vehicles were taken into custody because they were a menace to traffic, abandoned, or unregistered. Department of Motor Vehicles regulations already require notice to vehicle lienholders upon any nonconsensual tow.

EFFECTIVE DATE: Upon passage

PA 04-45—sSB 360

Banks Committee

Judiciary Committee

AN ACT CONCERNING THE CONNECTICUT UNIFORM SECURITIES ACT

SUMMARY: This act makes several changes to the Connecticut Uniform Securities Act. It removes provisions allowing investment advisers registered with the federal Securities and Exchange Commission (SEC) to avoid certain application and notification requirements applicable to Connecticut investment advisers. It sets a \$50 per agent fee for transferring broker-dealer or investment adviser agents from one broker-dealer or investment adviser to another, and charges the fee to the broker-dealer or investment adviser. The act also extends the statute of limitations for certain actions related to misrepresentation and fraud in investment advisory services and makes several fees nonrefundable.

EFFECTIVE DATE: October 1, 2004

REGISTRATION (§ 1)

The act prohibits anyone from transacting business in Connecticut as a broker-dealer or a broker-dealer's agent if the person is currently subject to a sanction prohibiting him from transacting securities business in Connecticut and the sanction was imposed by (1) the SEC or (2) a self-regulatory organization registered under federal law, administered by the SEC, and of which the broker-dealer is a member.

The act eliminates a provision allowing an investment adviser registered with the SEC to file a notice and a nonrefundable \$100 fee with the banking commissioner for each branch office in Connecticut rather than applying for branch office registration. Instead, it subjects these investment advisers to a provision prohibiting broker-dealers and investment advisers from transacting business in Connecticut unless they register each place of business as a branch office and pay a nonrefundable \$100 fee.

The act also deletes a provision requiring an investment adviser registered with the SEC to notify the commissioner of its acquisition or relocation of any branch office in Connecticut in the same manner and at the same time as it notifies the SEC, and to pay the commissioner a nonrefundable \$100 fee. Instead, it subjects these investment advisers to the same notification and fee requirements as all other investment advisers and broker-dealers in Connecticut.

FEES (§ 3)

The act specifies that investment adviser and broker-dealer registrations expire at the close of business on December 31 of the year they became effective. Prior law terminated these registrations on December 31 of each calendar year unless renewed.

The act requires broker-dealers and investment advisers receiving a "mass transfer" to pay the commissioner or his designee a nonrefundable \$50 fee for each agent or investment adviser agent whose registration is transferred. It defines a mass transfer as a transfer of one broker-dealer's or investment adviser's agents to another broker-dealer or investment adviser due to the transferring entity's cessation of business activity, succession, acquisition, merger, consolidation, or other reorganization. The law requires agents requesting transfer of their registration but not participating in a mass transfer to pay a \$50 transfer fee to the commissioner or his designee.

The act also specifies that registration, transfer, and other securities-related fees paid to the commissioner are nonrefundable.

DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION (§ 4)

The act extends the commissioner's authority to revoke, deny, suspend, restrict, or condition an applicant's or registrant's registration or activities to current or former investment adviser agents charged with exercising supervisory authority who fail to reasonably exercise these duties. The commissioner may already take these actions against broker-dealers, broker-dealer agents, and investment advisers who fail to supervise reasonably. The act also extends his authority to apply to former broker-dealer supervisory agents and makes minor related changes.

STATUTE OF LIMITATIONS (§ 6)

The act extends the amount of time a person has to bring an action for intentional misrepresentation or fraud in connection with investment advisory services from (1) one to two years after the date misrepresentation or fraud is, or reasonably should have been, discovered and (2) three to five years from the date the misrepresentation or fraud actually occurred. It removes separate provisions for actions arising out of intentional misrepresentation or fraud in the purchase or sale of an interest in a limited partnership not required to register under federal law.

PA 04-51—SB 159

Banks Committee

AN ACT CONCERNING CONNECTICUT CREDIT UNION BRANCHES

SUMMARY: This act eliminates the banking commissioner's authority to disapprove an application to establish a branch of a single or multiple common-bond Connecticut credit union branch if the proposed branch will result in an oversaturation of credit unions in the town. Under the act, common-bond credit unions (those based on a common bond of occupation or association) may establish branches regardless of how many credit unions are already located in the town.

EFFECTIVE DATE: Upon passage

PA 04-61—sHB 5102

Banks Committee

Judiciary Committee

AN ACT IMPOSING A PENALTY FOR ENGAGING IN THE BUSINESS OF TRANSMITTING MONEY WITHOUT A LICENSE

SUMMARY: This act makes it a class D felony (see Table on Penalties) for anyone to knowingly engage in the business of (1) issuing Connecticut payment instruments or (2) money transmission, without obtaining a money transmitter's license from the banking commissioner. It specifies that each transaction in violation of this provision constitutes a separate offense.

EFFECTIVE DATE: October 1, 2004

PA 04-67—sHB 5341

Banks Committee

Judiciary Committee

Planning and Development Committee

AN ACT CONCERNING THE VALIDATION OF MORTGAGE RELEASES

SUMMARY: This act validates mortgage releases executed by partnerships, associations, limited liability companies, or corporations that would otherwise be invalid because they were not issued or executed by, or failed to appear in the name of, the record holder of the mortgage on one- to four-family residential real estate in Connecticut. Under the act, such mortgage releases are valid as if released in the mortgage-holder's name unless (1) an action challenging the validity is brought and notice of the pending litigation is recorded in the town where the release is recorded within five years after the release's recording or (2) the release was obtained by forgery or fraud.

The person executing the mortgage release also must record in the land records where the mortgage was recorded an affidavit stating:

1. the person making the affidavit has been the record owner of the property described in the mortgage for at least the last two years;
2. the recording information for the mortgage, any assignments, and release;
3. since the date the release was recorded, the person has not received a demand for payment of any or all of the debt the mortgage secures and has received no notice or communication indicating that any or all of the mortgage debt remains due or owing; and

4. to the best of his knowledge and belief, the mortgage has been paid in full.

EFFECTIVE DATE: July 1, 2004

PA 04-69—sHB 5411

Banks Committee

Judiciary Committee

AN ACT CONCERNING CONSUMER CREDIT LICENSEES AND CREDITORS' COLLECTION PRACTICES

SUMMARY: This act requires the banking commissioner to suspend automatically the license of several Banking Department licensees, including mortgage lenders and brokers, if a check used to pay their license fee is dishonored. Under prior law, a dishonored check did not trigger license suspension. The act allows surety companies issuing bonds to certain licensees to cancel the bond by giving 30 days' notice and requires the commissioner to suspend the license if a new or renewal bond is not in place. It increases the commissioner's enforcement authority over actions that constitute banking law violations. The act expands debt adjusters' bond requirements and permits the commissioner to allow them to carry insurance if they cannot meet the required bond threshold.

The act also makes several technical changes.

EFFECTIVE DATE: October 1, 2004

FIRST AND SECONDARY MORTGAGE LENDERS AND BROKERS (§§ 6, 7, 14, 15, 19)

License or Registration Fee Payment

The act requires the commissioner, if he determines that a check filed with his office to pay a license fee for a first or secondary mortgage lender, correspondent lender, or broker is dishonored, to suspend automatically the license or a renewal license issued but not yet effective. He must give the licensee notice of the suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions. The act also requires the commissioner, if he determines that a check used to pay an originator's registration fee is dishonored, to suspend automatically the registration or a registration issued but not yet effective. He must give the originator and licensee for whom the originator works notice of the suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions. An originator is a person working for a mortgage lender or broker to negotiate, solicit, arrange, or find mortgage loans.

Surety Bonds

The act allows the surety company issuing a bond for a first mortgage lender, correspondent lender, or broker licensee to cancel the bond at any time by written notice to the licensee stating the cancellation's effective date. The notice must be sent at least 30 days before the cancellation date to (1) the licensee, by certified mail, and (2) the banking commissioner. The act requires the commissioner to suspend the license automatically on the cancellation date unless the surety bond has been replaced or renewed. The commissioner must give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions.

Banking Law Violations

The law allows the commissioner to bring an enforcement action if it appears to him that someone has violated, is violating, or is about to violate the mortgage lender, broker, or originator statutes, or that a licensee has failed to perform an agreement with a borrower. The act allows him also to issue a cease and desist order under those circumstances, pursuant to existing due process requirements. It also clarifies that first and secondary mortgage lender licensees do not have to be licensed as small loan lenders when making first or secondary mortgage loans, as applicable, for \$15,000 or less with an annual interest rate over 12%.

OTHER BANKING DEPARTMENT LICENSEES (§§ 16, 17, 20, 22, 24, 30)

The act requires the commissioner to suspend automatically certain licensees' licenses if he determines that a check filed with his office to pay a license or application fee is dishonored. The suspension applies to fees for licenses and for renewal licenses issued but not yet effective. The commissioner must give the licensee notice of the suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions. The suspension applies to the following:

1. sales finance companies,
2. small loan lenders,
3. business and industrial development corporations,
4. debt adjusters, and
5. consumer collection agency licensees.

SALES FINANCE COMPANIES (§18)

The act allows the commissioner to take enforcement action, including issuing a cease and desist order, against a sales finance company licensee if it

appears that the licensee has defrauded any retail buyer to the buyer's damage or willfully failed to perform a written agreement with a retail buyer. It also allows him to issue a cease and desist order if it appears to him that someone has violated, is violating, or is about to violate the sales finance company laws. He may issue a cease and desist order only after taking required due process steps.

SMALL LOAN LENDERS (§ 21)

The act allows the commissioner to suspend or refuse to renew a small loan lender's license if he finds the licensee has violated a provision of the small loan lender statutes or regulations, or if he learns of a fact or condition that, if it had existed at the time of the original license application, clearly would have warranted a denial of the license. The law already allowed him to revoke a license for these reasons.

CREDIT COLLECTION PRACTICES (§ 23)

Prior law defined a "creditor" for credit collection purposes as a person to whom a consumer debtor owes a debt resulting from a transaction occurring in the ordinary course of the person's business. The act expands the definition to include any person to whom that debt is assigned.

DEBT ADJUSTER BOND REQUIREMENT (§ 25)

The act moves, from July 31 to March 31, the end date of each year-long period used to measure a debt adjuster's adjustment activity in order to calculate the amount of the bond it must file. It removes a requirement that the licensee submit the bond or its renewal to the commissioner, instead requiring the licensee to submit evidence that the bond complies with the statutes.

If an applicant for an initial or renewal debt adjuster license establishes that it is unable to comply with the bond requirement, the act allows it to submit to the commissioner, by July 1, a request for an alternative to the bond requirement. If the commissioner finds the applicant's financial responsibility, character, reputation, integrity, and general fitness so warrant, he may permit the applicant or licensee to supplement the maximum surety bond that it can obtain, which must be at least \$40,000, with other bonds and insurance policies, in such amounts, for such periods, and subject to such conditions, as he approves. The bond or insurance policy must be written or issued by a surety or company authorized to do business in Connecticut.

Prior law required an applicant or licensee filing a bond to maintain it during the entire license period and prohibited its aggregate liability under the bond from

exceeding the bond's principal amount. The act requires the aggregate liability to remain under the combined limit of both the bond's principal amount and the insurance policy's liability. The law prohibits a licensee from using, attempting to use, or making reference to any word or phrase suggesting that it is endorsed, sponsored, recommended, or bonded by the state. The act also prohibits a licensee from indicating that it is insured by the state.

The act permits a surety or insurance company to cancel any bond or insurance policy it writes or issues to a debt adjuster at any time by providing the licensee with written notice, stating the cancellation's effective date. The notice must be sent at least 30 days before the cancellation date to (1) the licensee, by certified mail, and (2) the banking commissioner. The act requires the commissioner to suspend the license automatically on the cancellation date unless the surety bond or insurance policy is replaced or renewed. The commissioner must give the licensee notice of the suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions.

RETAIL INSTALLMENT SALES FINANCING (§ 29)

The act allows the commissioner to order someone to cease and desist whenever it appears that the person has violated, is violating, or is about to violate the retail installment sales financing laws. He must comply with statutory due process requirements before issuing the order.

CONSUMER COLLECTION AGENCY BOND REQUIREMENT (§ 31)

The act allows the surety company issuing a consumer collection agency licensee's bond to cancel it at any time by written notice to the licensee stating the cancellation's effective date. The notice must be sent at least 30 days before the cancellation date to (1) the licensee, by certified mail, and (2) the commissioner. The act requires the commissioner automatically to suspend the license on the cancellation date unless the surety bond is replaced or renewed. He must give the licensee notice of the suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions.

BACKGROUND

Related Act

PA 04-14 requires the banking commissioner, if he determines that a check filed with his office to pay an application or license fee is dishonored, to suspend automatically a check cashing service's license or

approval or renewal license issued but not yet effective. He must give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on those actions. The same provisions apply to dishonored checks to pay the investigation or license fee for a money transmission renewal license.

PA 04-105—sSB 157

Banks Committee

AN ACT CONCERNING MORTGAGE RATE LOCK-INS

SUMMARY: For purposes of the mortgage rate lock-in statutes, this act includes first-mortgage correspondent lenders in the definition of a "mortgage lender" and includes lines of credit in the definition of a "loan." The statutory loan definition also encompasses first-mortgage loans, renewals, and refinancing. The act explicitly allows a mortgage rate lock-in to include electronically transmitted confirmations stating mortgage rates and allows the applicant's representative, in addition to the applicant himself, to receive such a confirmation.

Prior law prohibited mortgage lenders from entering into a mortgage rate lock-in agreement unless the agreement was in writing. The act instead prohibits a lender from committing to a first-mortgage loan applicant or his representative that the lender will make a loan at a specified rate if the loan is closed by the expiration of a specified period except by issuing a mortgage rate lock-in. It eliminates the requirement that the lock-in be in writing.

The act prohibits a mortgage broker from (1) collecting a rate lock-in fee, except where a governmental agency requires it to collect the fee directly; (2) issuing a mortgage rate lock-in; or (3) otherwise representing to a first-mortgage loan applicant or his representative that the loan will be made at a specified rate if it is closed by a certain time. But it specifies that a mortgage broker may provide a mortgage lender's mortgage rate lock-in to an applicant or his representative on the lender's behalf and collect a rate lock-in fee, payable to the lender, on the lender's behalf.

EFFECTIVE DATE: Upon passage

PA 04-136—sSB 358*Banks Committee**Judiciary Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING BANKS IN RECEIVERSHIP AND BANK BRANCHING AND A SALES TAX EXEMPTION FOR CERTAIN COIN AND CURRENCY SERVICES**

SUMMARY: This act makes a number of changes to the banking statutes regarding trust banks, uninsured banks, receiverships, conservatorships, franchise tax, and bank branching, including:

1. requiring trust and uninsured banks to maintain at least \$1 million in assets on deposit;
2. decreasing the franchise tax newly organized capital stock Connecticut banks with more than 10,000 authorized shares must pay;
3. protecting the interests of trust clients;
4. expanding the circumstances under which an independent person may serve as a receiver or conservator;
5. requiring a trust or uninsured bank's receiver to publish notice of the bank's receivership and depositors,' clients,' and creditors' rights;
6. expanding the receiver's reporting and notice requirements;
7. creating a specific order of priority for distributing trust and uninsured banks' assets;
8. directing receivers to substitute successor fiduciaries to take over the bank's fiduciary positions;
9. requiring certain claimants to file a proof of claim, specifying its content, and establishing procedures for claimants to file claims against a bank in receivership;
10. creating receiver and conservator immunity and indemnity for acts within the scope of their duties; and
11. allowing an out-of-state bank that, with the commissioner's approval, (a) merges or consolidates with or acquires a branch or (b) establishes a de novo branch, to establish additional branches without following the regular procedure for establishing a branch in Connecticut.

The act exempts coin and currency services provided to a financial service company, such as a bank or credit union, by or through another such company from the 6% sales and use tax. It also makes minor and technical changes.

EFFECTIVE DATE: Upon passage

FEES (§ 4)

The act sets a \$2,500 fee for investigating and processing an interstate banking transaction application, unless another provision of the fee statute already imposes an investigation and processing fee on the applicant.

NEWLY ORGANIZED TRUST AND UNINSURED BANKS (§§ 1, 5, 9)

Prior law prohibited a newly organized Connecticut bank from commencing business until its final certificate of authority had been issued and, for a bank requiring insurance, it had Federal Deposit Insurance Corporation (FDIC) insurance. The act prohibits a newly organized trust bank or uninsured bank from commencing business unless it has sufficient assets on deposit. It defines a "trust bank" as a Connecticut bank organized to function solely in a fiduciary capacity. It defines an "uninsured bank" as a Connecticut bank that does not accept retail deposits and for which FDIC insurance is not required. It defines "retail deposits" as any deposits made by individuals who are not "accredited investors," as that term is used in federal Regulation D (17 CFR § 230.501(a)).

Asset Requirement (§§ 5, 9)

The act requires trust and uninsured banks to keep at least \$1 million in assets on deposit with banks the banking commissioner approves. Banks that receive a final certificate of authority before the act takes effect must keep assets on deposit as follows: (1) at least \$250,000 no later than one year from the effective date, (2) at least \$500,000 no later than two years from the effective date, (3) at least \$750,000 no later than three years from the effective date, and (4) at least \$1 million no later than four years from the effective date. The asset value is based on the principal amount or market value, whichever is lower. If the commissioner determines an asset should be valued at a lower amount, he must notify the trust or uninsured bank, which must then value the asset as the commissioner directs. The act prohibits a bank from depositing its assets until that bank and the bank where it will make the deposit execute a deposit agreement that satisfies the commissioner.

The act defines "assets" for deposit requirement purposes as (1) U.S. dollar deposits payable in the United States, other than certificates of deposit; (2) bonds, notes, debentures, or other obligations of the United States or its agencies or instrumentalities, of Connecticut or a Connecticut county, city, town, village, school district, or instrumentality, or guaranteed by Connecticut or the United States; (3) bonds, notes,

debentures, or other obligations issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation; (4) commercial paper payable in dollars in the United States, as long as it is rated in one of the three highest rating categories by a rating service the commissioner recognizes, and if it is rated by more than one recognized rating service, then each rating service rates it in one of the three highest categories; (5) negotiable certificates of deposit payable in the United States; (6) reserves held at a federal reserve bank; and (7) other deposits as the commissioner, upon written application, determines.

If the commissioner believes a trust or uninsured bank that is in danger of becoming insolvent is not likely to be able to meet its depositors' demands or pay its obligations, or is likely to incur severe losses, the law allows him to require the bank to maintain assets on deposit in an amount sufficient to meet fees and assessments due to him and his costs and expenses in the event of the bank's receivership. The act allows him to increase the amount of assets the banks must keep on deposit for these purposes.

FRANCHISE TAX (§ 5)

Prior law required newly organized capital stock Connecticut banks to pay a franchise tax of one cent per share of authorized capital stock to the state treasurer. The act instead requires the franchise tax to be one cent per share for the first 10,000 authorized shares, one-half cent per share for each authorized share from 10,001 to 100,000 shares, one-quarter cent per share for 100,001 to one million authorized shares, and one-fifth cent per share for each authorized share over one million shares.

CLIENT PROTECTION (§§ 1, 10, 11, 12, 15, 16, 19)

The act expands the class of people who are protected by the receivership and conservatorship statutes to include clients. Prior law protected only depositors, share account holders, and creditors. The act defines a "client" as (1) a beneficiary of a trust for whom a Connecticut bank acts as trustee; (2) a person for whom the Connecticut bank acts as agent, custodian, or bailee; or (3) another person to whom the bank owes a duty or obligation under a trust or other account administered by the bank, regardless of whether the Connecticut bank owes a fiduciary duty to the person.

APPLICATION TO COURT FOR APPOINTMENT OF RECEIVERS AND CONSERVATORS (§ 13)

The law allows the commissioner to apply to the Superior Court for an injunction or appointment of a conservator or receiver for several reasons, including if it appeared to him that a Connecticut bank or credit

union or an out-of-state bank or credit union with a Connecticut branch was insolvent. The act allows him also to file such an application if it appears to him that one of these financial institutions is in danger of imminent insolvency or that its capital is not sufficient to support its risk level.

APPOINTMENTS OF RECEIVERS AND CONSERVATORS (§ 14)

Prior law allowed an independent person, as opposed to the commissioner, the FDIC, or the National Credit Union Administration (NCUA), to be appointed as receiver or conservator only if extraordinary circumstances existed. The act expands this provision to permit an independent person to be receiver or conservator if the FDIC and NCUA cannot, such as for trust and uninsured banks. If an independent person is appointed, the act allows the Superior Court to require him to post a suitable bond.

It requires the commissioner to be a party to the receivership proceeding or conservatorship when the receiver or conservator is an independent person, and it gives him standing to initiate or contest any motion. It specifies that the commissioner's views are entitled to deference unless inconsistent with the plain meaning of the receivership and conservatorship statutes. If an independent person is appointed receiver or conservator, the act also requires the cost and expenses incurred in the bank's or credit union's liquidation, reorganization, or administration, including any funds the commissioner pays to the person before the institution's placement in receivership or conservatorship, to be paid out of its funds, subject to the court's approval.

When the commissioner acts as receiver or conservator, the law allows him to appoint an agent to perform those duties on his behalf. The act requires, rather than allows, the agent to be a Banking Department employee. The act allows the commissioner to retain consultants as he deems necessary. It requires salaries and expenses incurred in a bank's or credit union's reorganization to be paid, as the law requires for liquidations and administrations, out of the institution's funds, subject to the Superior Court's approval. In addition, the act requires the state to be reimbursed for costs and expenses the Banking Department incurs in liquidation or reorganization, as it must for administration of the receivership or conservatorship.

COURT PROCEEDINGS (§ 14)

The act gives the Superior Court where a receivership proceeding against a Connecticut bank or credit union is pending exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the institution or receiver. It allows the receiver

to file in any jurisdiction an ancillary suit to obtain jurisdiction or venue over a person or property.

The act specifies that a Connecticut bank's or credit union's record that the receiver obtained and held in the course of the receivership proceeding, or a certified copy of the record under the receiver's official seal, is admissible as evidence in all cases without proof of correctness or other proof, except the certificate of the receiver that the record was received from the bank's or credit union's custody or found among its effects. It allows the receiver to certify the correctness of (1) a record that was received from the institution's custody or found among its effects, (2) a record of the receiver's office, or (3) any fact contained in the record. The act makes the record admissible as evidence in all cases in which the original would be evidence and states that the original record or a certified copy is *prima facie* evidence of the facts it contains.

EFFECT OF JUDGMENT (§ 14)

The act specifies that a court judgment or order from Connecticut or another jurisdiction in an action pending by or against a Connecticut bank or credit union, rendered after the institution was placed in receivership, is not binding on the receiver unless the receiver was made a party to the suit. Within the first year of the bank's or credit union's receivership, the act exempts the receiver from having to plead to any suit pending against the institution in Connecticut on the date the receivership began and in which the receiver is a proper plaintiff or defendant.

RECEIVERSHIP PROCESS (§ 17)

The act removes trust and uninsured banks from a provision allowing the Superior Court to designate a time for claims to be brought to the receiver. Instead, it requires the receiver, as soon as reasonably practicable after his appointment, to publish notice in a newspaper of general circulation in each town where the bank has an office, stating that: (1) the bank has been placed in receivership; (2) the depositors, clients, and creditors must present their claims for payment on or before a specific date and at a specific place; and (3) all safe deposit box holders and bailors of property left with the bank must remove their property by a specified date. The deadline the receiver selects must be at least 121 days after the notice date and must allow (1) the bank's affairs to be wound up as quickly as feasible and (2) depositors, clients, creditors, safe deposit box holders, and bailors of property adequate time to present claims, withdraw accounts, and redeem property. The receiver may adjust the dates with the court's approval, with or without republishing the notice, if he determines

additional time is needed for presentation, withdrawal, or redemption.

As soon as reasonably practicable, given the state of the bank's records and adequacy of staffing, the act requires the receiver to mail to each of the bank's known depositors, clients, creditors, safe deposit box holders, and bailors of property left with the bank, at the mailing address in the bank's records, an individual notice containing the same information as the newspaper notice and specific information pertaining to the addressee's account or property. The receiver may require a fiduciary claimant to file a proof of claim if the bank's records are insufficient to identify the claimant's interest.

COLLECTIONS (§ 18)

The act requires the receiver to deposit money collected by converting into money the assets of any Connecticut bank or credit union in receivership in a bank, Connecticut or federal credit union, or an out-of-state bank or credit union with a Connecticut branch.

PAYMENT PROHIBITED (§ 19)

The act prohibits a correspondent bank of a bank or credit union in receivership from paying an item drawn on the bank's or credit union's account that is presented for payment after the correspondent has received actual notice that an injunction was granted or a receiver appointed, unless the correspondent bank previously certified the item for payment.

VALIDITY OF CERTAIN AGREEMENTS (§ 20)

The act invalidates agreements against a receiver that tend to diminish or defeat the interest of the estate in a Connecticut bank or credit union unless they (1) are in writing; (2) were executed by an institution and a person claiming an adverse interest under the agreement, including the obligor, when the institution acquired the asset; (3) were approved by the institution's governing board or designated committee, and the board's or committee's minutes reflect that approval; and (4) have been the institution's official records continuously since their execution.

DELIVERY OF RECORDS (§ 21)

The act requires a Connecticut bank's or credit union's affiliates, officers, directors, employees, shareholders, trustees, agents, attorneys, attorneys-in-fact, and correspondents to deliver immediately to the institution's receiver or conservator, without cost, any record or other property of the institution or relating to its business. If the record or property is, by contract or

otherwise, the property of one of the parties listed above and can be copied, the act requires it to be copied and the copy delivered to the receiver or conservator. The owner must retain the original until the receiver or conservator notifies him that it is no longer required in administering the institution's affairs or until the Superior Court, after notice and hearing, directs.

ADMINISTRATION (§ 23)

The act expands requirements that the receiver or conservator file statements of the bank's or credit union's creditors, assets, disbursements, and cash on hand with the Superior Court. Prior law required this statement to be made twice each year and directed the court clerk to record and keep all related reports and orders on file in his office. The act instead requires a quarterly report (1) listing the names and addresses of all clients, depositors, and share account holders, as well as creditors, and the amounts respectively due them; (2) listing the location and estimated value of assets on hand; and (3) showing the general condition of the institution and the operation, receipts, and expenditures of its assets. The act also requires the receiver or conservator to file a final report on the liquidated institution, showing all receipts and expenditures and giving a full explanation and statement of the disposition of all assets and liabilities. These reports must be filed with the banking commissioner as well as the Superior Court.

The act directs the receiver to pay all administrative expenses out of the bank's or credit union's money or other assets and submit to the court quarterly itemized expense reports. It requires the court to approve the report unless an objection is filed before the 11th day after the report's submission. Only a party in interest may object and must specify each item objected to and the ground for the objection. The court must set the objection for hearing and notify the parties. The objecting party has the burden of proof to show that the item objected to is improper, unnecessary, or excessive.

The act allows the court to prescribe whether notice of the receiver's report should be given by service on specific parties, by publication, or by a combination of the two. The court may order an audit of the bank's or credit union's books and records relating to the receivership or conservatorship. This report must be filed with the court and the commissioner. The act requires the receiver to make the books and records available to the auditor as required by the court order, and it directs him to pay the audit expenses as an administrative expense.

DISSOLUTION OF INJUNCTIONS (§ 24)

Prior law required a receiver to apply within 30 days to dissolve an injunction restraining him from disposing of any of the trust estate. The act extends this provision to all estates.

PAYMENTS AND CONVEYANCES IN CONTEMPLATION OF INSOLVENCY (§ 25)

Prior law voided all payments or conveyances a Connecticut bank or credit union made in contemplation of insolvency with the fraudulent intent to prevent the distribution and appropriation of its effects as prescribed by law. The act instead allows a receiver to void a transfer or lien on the property or assets of a bank or credit union in receivership if it

1. was made or created (a) four months before the date the institution was placed in receivership or (b) one year before the date the institution was placed in receivership if the creditor was, at that time, a bank or credit union affiliate, officer, director, or principal shareholder;
2. was made or created with the intent to give the creditor or depositor, or enable him to claim, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class; and
3. is accepted by a creditor or depositor having reasonable cause to believe that a preference will occur.

The act makes each bank or credit union officer, director, manager, shareholder, trustee, agent, employee, attorney-in-fact, correspondent, or other person working on its behalf, who has participated in implementing a voidable transfer or lien, and each person receiving property or its benefit as a result of a voidable transfer or lien, personally liable for the property or benefit received. It requires them to account to the receiver for the benefit of the institution's clients, depositors, and creditors.

The act permits the receiver to avoid a transfer or lien on the property or assets that a client, creditor, depositor, or shareholder could have avoided. It also allows him to recover the property transferred, or its value, from the transferee or the person who received it, unless the transferee or recipient was a bona fide holder for value before the date the institution was placed in receivership.

DISTRIBUTION OF ASSETS (§ 26)

The act creates a specific order of priority for distributing the assets of trust and uninsured banks that differs from the distribution order for all other Connecticut banks.

<i>Order of distribution for trust and uninsured banks</i>	<i>Order of distribution for all other Connecticut banks</i>
1. all fees and assessments due the commissioner	1. all fees and assessments due the commissioner
2. administrative expenses	2. charges and expenses of settling the bank's affairs
3. approved claims of owners of secured trust funds on deposit, to the extent of the value of the security	3. all deposits
4. approved claims of secured creditors, to the extent of the value of the security	4. all other liabilities
5. approved claims by beneficiaries of insufficient commingled fiduciary money or missing fiduciary property and approved claims of the bank's clients	5. any liquidation account
6. other approved depositor and general creditor claims not covered by a higher priority, including unsecured claims for federal, state, or local taxes or debts	6. for a capital stock Connecticut bank, shareholders' claims; for a mutual savings bank or mutual savings and loan association, depositors' claims in proportion to their respective deposits
7. approved claims of a type listed above but not filed within the specified time	
8. claims of capital note or debenture holders or holders of similar obligations and proprietary claims of shareholders or other owners according to the terms established by issue, class, or series	

The act defines "administrative expense" for purposes of distributing a trust or uninsured bank's assets as (1) the expense of any required audit; (2) any charge or expense of settling the bank's affairs, including court costs and the expenses of operating and liquidating the bank's estate; (3) wages owed to a bank employee for work performed within three months before the date the bank was placed in receivership, up to \$2,000 per employee; (4) current wages for services rendered after the date of receivership owed to a bank employee whose services the receiver retained; and (5)

an unpaid expense of bank supervision or conservatorship before the bank was placed in receivership.

DISCHARGE OF RECEIVER (§ 27)

The law requires a Connecticut bank to forfeit its charter, and a Connecticut credit union to forfeit its certificate of authority, upon the receiver's discharge from further liability if the court has not approved a refinancing or reorganization plan. The act also requires a bank to forfeit its certificate of incorporation (the term recent banking laws use instead of charter) under these circumstances.

PROPERTY IN BANK CUSTODY (§ 28)

The act specifies that a contract between a trust or uninsured bank in receivership and another person for bailment; of deposit for hire; or to lease a safe, vault, or safe deposit box terminates on the date specified for removal of property in the notice that the act requires to be published and mailed, or a later date the Superior Court or receiver approves. Anyone who paid rental or storage charges for a period extending beyond the designated date has a claim against the bank's estate for a refund of the unearned portion.

If property is not removed by the contract termination date, the act requires the receiver to inventory it. In doing this, he may open a safe, vault, or safe deposit box, or any package, parcel, or receptacle in his custody or possession. The property must be marked to identify, to the extent possible, its owner or the person who left it with the bank. After the receiver inventories all such property in his custody, the act requires him to compile a list of unclaimed property, separated by the office that received it. He must then publish the list and the names of property owners as shown in bank records in a newspaper of general circulation in each town where the bank has an office retaining unclaimed property. The published notice must specify a procedure for claiming the property, unless the court, upon the receiver's application, approves a different procedure.

FIDUCIARIES (§ 29)

Termination

The act requires a trust or uninsured bank's receiver, as soon after his appointment as is practicable, to terminate all fiduciary positions the bank holds, surrender all property the bank holds as a fiduciary, and settle the fiduciary accounts. With the court's approval, the receiver must release all segregated and identifiable fiduciary property the bank holds to one or more

successor fiduciaries and may sell one or more fiduciary accounts to successor fiduciaries on terms that appear to be in the best interests of the bank's estate and the people interested in the property or fiduciary accounts.

Substitution

Upon the sale or transfer of fiduciary property or a fiduciary account, the act automatically substitutes the successor fiduciary without further action or court order. Before the effective date of the successor fiduciary's substitution, the receiver must mail notice of the substitution to each person to whom the bank provides periodic fiduciary activity reports. The notice must include the bank's name, the successor fiduciary's name, and the substitution's effective date. The act specifies that the probate court procedures for removing a fiduciary do not apply to this substitution process.

The act gives a successor fiduciary all of the bank's rights, powers, duties, and obligations and deems it to be named, nominated, or appointed as fiduciary in any will, trust, court order, or similar written document or instrument naming, nominating, or appointing the bank as fiduciary, whether executed before or after the successor fiduciary's substitution. But the successor fiduciary does not have any obligation or liability based on its substitution for any acts, actions, inactions, or events occurring before the substitution's effective date.

Distribution

If commingled fiduciary money the trust or uninsured bank held as trustee is insufficient to satisfy all fiduciary claims to it, the act directs the receiver to distribute the money pro rata to all of the fiduciary claimants based on their proportionate interest.

CLAIMS (§ 30)

Proof of Claims

To receive payment of a claim against the estate of a trust or uninsured bank in receivership, the act directs a person with a claim, including a secured claimant or a fiduciary claimant the receiver ordered to file a proof of claim, to present proof of claim to the receiver at the place and within the period the receiver specifies. The receiver's receipt of the required proof of claim is a condition precedent to the claim's payment. A claim not filed within the period or at the place the receiver specified may not participate in the receiver's asset distribution, except that, subject to court approval, the receiver may accept a claim filed within 180 days after notice of the claimant's right to file a proof of claim was mailed to the claimant. The act makes such a claim subordinate to a general creditor's approved claim.

Interest does not accrue on any claim after the date the bank is placed in receivership. These provisions do not apply to a (1) fiduciary claimant or depositor where the bank's records are sufficient to identify that party's interest or (2) person acting in his capacity as shareholder.

The act requires the proof of claim against a trust or uninsured bank to be in writing, signed by the claimant, and include:

1. a statement of the claim;
2. a description of the consideration for the claim;
3. a statement of whether collateral is held or a security interest is asserted against the claim and, if so, a description of it;
4. a statement of any right of payment priority for the claim or other specific right the claimant asserts;
5. a statement of whether a payment has been made on the claim and, if so, the amount and source of the payment, to the extent the claimant has knowledge;
6. a statement that the bank justly owes the claimant the amount claimed; and
7. any other matter the court requires.

The act allows the receiver to designate the form of the proof of claim. It must be filed under oath unless the receiver waives the oath. If a claim is based on a written instrument, the original instrument, unless lost or destroyed, must be filed with the proof of claim. After the instrument is filed, the receiver may permit the claimant to substitute a copy of the instrument until the final disposition of the claim. If the instrument is lost or destroyed, the act requires a statement of that fact and the circumstances of the loss or destruction to be filed under oath with the claim.

Judgments

The act prohibits a judgment against a trust or uninsured bank in receivership taken by default or collusion before the date the bank was placed in receivership from being considered as conclusive evidence of the bank's liability to the judgment creditor or the amount of damages to which the judgment creditor is entitled. A judgment against the bank entered after the receivership date also may not be considered as evidence of liability or the amount of damages.

Secured Claims

The act allows the owner of secured trust funds on deposit to file a claim as a creditor against a trust or uninsured bank in receivership. The court must supervise determination of the security's value by converting it into money. The act allows the owner of a

secured claim against a bank in receivership to surrender the security and file a claim as a general creditor or apply the security and discharge the claim. If the owner applies the security and discharges the claim, any deficiency must be treated as a claim against the bank's general assets on the same basis as an unsecured creditor's claim. The amount of the deficiency must be determined as an unliquidated or unqualified demand, as explained below, except that if the amount has been adjudicated by a court in a proceeding in which the receiver had notice and an opportunity to be heard, the court's decision is conclusive as to the amount. The act requires the court to supervise determination of the value of the security a secured creditor holds by converting it to money according to the terms of agreement by which it was delivered to the creditor or by agreement, arbitration, compromise, or litigation between the creditor and receiver.

Unliquidated and Undetermined Demands

The act requires a claim against a trust or uninsured bank in receivership based on an unliquidated or undetermined demand to be filed within the period for the filing of the claim. It prohibits the claim from sharing in any distribution until the claim is definitely liquidated, determined, and allowed, at which point the claim shares on a pro rata basis with claims of the same class in all subsequent distributions.

If the receiver could otherwise close the receivership position, the act considers the proposed closing to be sufficient grounds to reject any remaining claim based on an unliquidated or undetermined demand. The receiver must notify the claimant of his intention to close the proceeding. If the demand is not liquidated or determined within 60 days of the notice, the receiver may reject the claim. The act deems a demand unliquidated or undetermined if its right of action accrued while the bank was placed in receivership and the demand's liability has not been determined or its amount has not been liquidated.

Set-Offs

The act requires mutual credits and mutual debts to be set off and only the balance allowed or paid. But a set-off may not be allowed in favor of a person if (1) the bank's obligation to the person on the date it was placed in receivership did not entitle the person to share as a claimant in the bank's assets; (2) the bank's obligation to the person was bought by or transferred to the person after the receivership began or for the purpose of increasing set-off rights; or (3) the person's or bank's obligation is as a trustee or fiduciary.

Upon request, the act requires the receiver to provide a person with an accounting statement identifying each debt that is due and payable. A person who owes a trust or uninsured bank an amount that is due and payable against which the person asserts set-off of potential future mutual credits must promptly pay the receiver the amount due and payable. The receiver must then refund, to the extent of the prior payment, mutual credits that become due and payable to the person.

Acceptance and Rejection of Claims

Within six months after the last day for filing claims, or a later date as the court allows, the act requires the receiver to accept or reject in whole or in part each claim filed against the bank, except for unliquidated or undetermined claims. The receiver must reject a claim if he doubts its validity. He must mail written notice to each claimant, specifying the disposition of the person's claim. If he rejects the claim in whole or in part, the receiver must specify in the notice the basis for rejection and advise the claimant of the procedures and deadline for appeal. The receiver must also send each claimant a summary schedule of approved and rejected claims by priority class and notify the claimant (1) that a copy of a claims distribution schedule, including only the claimant's name and the claim amounts allowed and rejected, is available upon request and (2) of the procedure and deadline for filing an objection to an approved claim.

The act requires the receiver, with court approval, to set a deadline for an objection to an approved claim. By that date, a bank depositor, creditor, other claimant, or shareholder may file an objection to an approved claim. The court must hear and determine the objection. If the objection is sustained, the court must direct an appropriate modification of the claims schedule.

Appeal of Rejection

The act allows a claimant to appeal the receiver's rejection to the Superior Court where the receivership proceeding is pending. The appeal must be filed within three months after the rejection notice's date of service. If the appeal is timely filed, the review is de novo, as if it were an action originally filed in the court, and is subject to the rules of civil procedure and appeal. An action to appeal a claim's rejection is separate from the receivership proceeding, and the act prohibits a claimant intervening in the receivership proceeding from initiating one. If the action is not timely filed, the receiver's action is final and not subject to review.

Distributions

The act requires the banking commissioner to deposit in a bank, Connecticut or federal credit union, or out-of-state bank or credit union with a Connecticut branch, all money available for the benefit of people who have not filed a claim and are, according to the bank's records, depositors and creditors of a trust or uninsured bank in receivership. The commissioner must pay the nonclaiming depositors and creditors on demand the undisputed amount the records show is held for their benefit.

The act allows the receiver to make periodic partial distributions to the holders of approved claims if: (1) all objections have been heard and decided, (2) the time for filing appeals has expired, (3) money has been made available to pay all nonclaiming depositors and creditors, and (4) a proper reserve is established for pro rata payment of rejected claims on appeal and claims based on unliquidated or undetermined demands. As soon as practicable after all objections, appeals, and claims based on previously unliquidated or undetermined demands have been determined and money has been made available to pay nonclaiming depositors and creditors, the act requires the receiver to distribute the bank's assets to satisfy approved claims, other than those asserted in a person's capacity as shareholder.

RECORDS (§ 31)

The act requires all fiduciary records relating to administration of a trust or uninsured bank's fiduciary accounts to be turned over to the successor fiduciary in charge of administering the accounts. It allows the receiver to devise a method for effectively, efficiently, and economically maintaining all other bank and receiver's office records. Upon the court's approval, the receiver may dispose of bank records that are obsolete and not needed for continuing to administer the receivership proceeding.

RECEIVER AND CONSERVATOR IMMUNITY AND INDEMNITY (§ 32)

Immunity and Indemnity Generally

The act sets out protections from liability for trust and uninsured banks' receivers and conservators, past and present, and their employees. It immunizes these individuals from suit or liability, both personally and in their official capacities, from any claim for damage to, or loss of, property, personal injury, or other civil liability for any of their alleged acts, errors, or omissions arising out of their duties or employment. But it does not hold them immune from suit or liability

for any damage, loss, injury, or liability caused by their intentional or willful and wanton misconduct. The act also indemnifies these parties in claims for property damage or loss, personal injury, or other civil liability out of the bank's assets for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts that must be paid for defending such legal action, unless it is determined on a final adjudication on the merits that the action giving rise to the claim was outside the scope of the person's duties or employment or was caused by intentional or willful and wanton misconduct.

These protections do not apply to attorneys, accountants, auditors, or other professionals or firms the receiver or conservator retains as independent contractors, or their employees.

Payments and Funds

The act directs attorneys' fees and related expenses incurred in defending a legal action for which immunity or indemnity is available to be paid from the bank's assets as they are incurred, before the action's final disposition, upon communication from the receiver, conservator, or employee of his intent to repay the money if a final adjudication on the merits determines that he is not entitled to immunity or indemnity. Any indemnification for expense payments, judgments, settlements, decrees, attorney's fees, surety bond premiums, or other amounts paid or to be paid from the bank's assets are administrative expenses of the receivership or conservatorship.

When there is actual or threatened litigation against a party for whom immunity or indemnity may be available, the act directs the receiver or conservator to segregate and reserve a reasonable amount from the bank's assets as security for payment of indemnity until all (1) applicable statutes of limitations have run; (2) actual or threatened actions against the receiver, conservator, or employee have been completely and finally resolved; and (3) obligations of the bank and the commissioner have been satisfied. The receiver or conservator, at his discretion and instead of segregating or reserving funds, may obtain a security bond or make other arrangements to enable him to secure fully the payment of all obligations.

Settlements

If any legal action against an employee for which indemnity may be available is settled before final adjudication on the merits, the act requires the receiver or conservator to pay from the bank's assets the settlement amount on the employee's behalf or indemnify him for the settlement amount unless the receiver or conservator determines that the claim (1) did not arise out of or by reason of the employee's duties or

employment or (2) was caused by the employee's intentional or willful and wanton misconduct. In any legal action where the receiver or conservator is a defendant, the act subjects the portion of the settlement relating to his alleged act, error, or omission to the approval of the Superior Court where the receivership or conservatorship is pending. The court must not approve that portion of the settlement if it determines that the claim (1) did not arise out of or by reason of the receiver's or conservator's duties or employment or (2) was caused by his intentional or willful and wanton misconduct.

Applicability

The act specifies that it should not be construed or applied to deprive a receiver, conservator, or employee of any immunity, indemnity, benefits of law, rights, or defense otherwise available. It applies to any suit based in whole or in part on any alleged act, error, or omission that occurs on or after the date the act takes effect. The act prohibits any legal action against a receiver, conservator, or employee based in whole or in part on an alleged act, error, or omission that occurred before the act takes effect, unless suit is filed and valid service of process obtained within one year after the act's effective date. The act applies its indemnification, attorneys' fees, payment, and settlement provisions to actions pending on or filed after it takes effect, regardless of when the alleged act, error, or omission occurred.

CREDIT UNION DIRECTORS (§ 38)

The act requires a Connecticut credit union's bylaws to include the procedure for appointing appointed directors. Prior law only required the bylaws to set out the method for electing directors.

PA 04-225—sHB 5410

Banks Committee

Higher Education and Employment Advancement Committee

Government Administration and Elections Committee

Education Committee

AN ACT CONCERNING THE CONNECTICUT STUDENT LOAN FOUNDATION

SUMMARY: This act broadens the Connecticut Student Loan Foundation's (CSLF) authority by allowing it to grant loans to anyone for elementary, secondary, or higher education expenses, regardless of whether they attend school in, or reside in, Connecticut. Prior law only allowed it to grant loans for postsecondary education and limited recipients to (1) people attending or planning to attend eligible Connecticut colleges and universities, (2) Connecticut residents attending or planning to attend eligible colleges and universities outside the state, and (3) people receiving loans from eligible lenders.

EFFECTIVE DATE: July 1, 2004

PA 04-48—SB 308

*Select Committee on Children
Human Services Committee
Judiciary Committee*

**AN ACT CONCERNING NOTIFICATION OF
CHILD NEGLECT REPORTS**

SUMMARY: This act requires the Department of Children and Families (DCF) to notify the legal guardian of any child committed to its care as a delinquent within 10 days of receiving a report that the child has been neglected. It must also notify the attorney who represented the child in the delinquency proceeding that led to the commitment. This requirement already applies to abuse reports.

The act also (1) changes the deadline for DCF to notify these parties if it substantiates an abuse report from 10 days after the report is received to 10 days after it is substantiated and (2) applies the new deadline to neglect reports. By law, DCF has 30 days to complete an abuse or neglect investigation.

EFFECTIVE DATE: October 1, 2004

PA 04-53—sSB 298

*Select Committee on Children
Human Services Committee
Insurance and Real Estate Committee*

**AN ACT CONCERNING HEALTH INSURANCE
FOR ADOPTIVE PARENTS**

SUMMARY: This act allows people who adopt children from the Department of Children and Families' custody to purchase group health insurance for themselves and their dependents through the state. Parents who choose this option must pay the full premium cost. They remain eligible for coverage until their adopted child turns age 18 or, if he has not completed high school, until he turns age 21.

The law already allows people who have been foster parents or parents in permanent family residence for more than six months to purchase this coverage.

EFFECTIVE DATE: October 1, 2004

PA 04-88—SB 300

*Select Committee on Children
Human Services Committee
Appropriations Committee*

**AN ACT CONCERNING SPECIAL STUDY
FOSTER CARE**

SUMMARY: This act allows the Department of Children and Families (DCF) to place an abused or neglected child age 14 or older in the home of anyone who is age 21 or older even though the person is not a licensed foster parent. DCF can do so for up to 90 days under the same conditions that it can place a child with an unlicensed relative for this period. The act terms the people who accept children under these circumstances "special study foster parents."

Before placing a child with a special study foster parent, DCF must (1) determine it is in the child's best interest, (2) conduct a satisfactory home visit, and (3) complete a basic assessment of the family. In addition, the foster parent must attest that neither he nor any adult living in the household has been arrested or convicted of a felony against a person; risk of injury to, or impairing the morals of, a minor; or possessing, using, or selling any controlled substance. As with an unlicensed relative, if a special study foster parent accepts placement of a child for over 90 days, he must become licensed as a foster parent.

The law allows the DCF commissioner to waive these standards or procedures, except for safety standards, on a case-by-case basis, when placing a child with an unlicensed relative. The waiver must be based on the child's need and best interests and the relative's home. The act requires the commissioner to document in writing her reasons for granting a waiver.

EFFECTIVE DATE: October 1, 2004

PA 04-89—sSB 314

*Select Committee on Children
Human Services Committee
Legislative Management Committee*

**AN ACT CONCERNING REPORTS ON
ADJUDICATED YOUTH IN THE CARE OF THE
DEPARTMENT OF CHILDREN AND FAMILIES**

SUMMARY: This act requires the Department of Children and Families (DCF) to report annually to the Judiciary, Human Services, and Children's committees on the

1. number, by gender and age, of adjudicated youth (16- and 17-year olds) in its custody;
2. facilities where they are housed and the status of facilities being constructed or prepared to house them; and
3. number, age, and gender of youths who have escaped from custody and the number of police reports filed about them.

The first report is due by June 1, 2004. Subsequent reports must be attached to DCF's annual report on the Connecticut Juvenile Training School, which must be submitted in February to the three committees.

EFFECTIVE DATE: Upon passage

PA 04-224—HB 5344

*Select Committee on Children
Education Committee*

**AN ACT CONCERNING CHILDHOOD
NUTRITION IN SCHOOLS, RECESS AND
LUNCH BREAKS**

SUMMARY: This act requires local and regional school boards to (1) provide all full-day students with a minimum 20-minute daily lunch break and (2) include a daily period of physical exercise for most students in kindergarten through grade five. But it allows a planning and placement team to develop a different schedule for an identified special education student. The act specifies that its provisions are subordinate to other state education laws.

The act also requires school boards to make nutritious food and drinks available for purchase whenever students can purchase drinks in school or when they can buy food during the regular school day. These products can include low-fat milk and other dairy products, water, 100% fruit juices, and fresh and dried fruit.

EFFECTIVE DATE: July 1, 2004

PA 04-238—sHB 5572

*Select Committee on Children
Appropriations Committee
Legislative Management Committee*

**AN ACT CONCERNING CHILD POVERTY AND
THE USE OF PSYCHOTROPIC MEDICATIONS
WITH CHILDREN AND YOUTH IN STATE
CARE**

SUMMARY: This act establishes a Child Poverty Council composed of legislative leaders, the Office of Policy and Management (OPM) secretary, executive agency heads, and other state officials to develop a plan to reduce the number of children living in poverty in Connecticut by 50% by July 1, 2014. It must submit the plan to various legislative committees by January 1, 2005 and then report annually on its implementation. The council terminates on June 30, 2015.

The act also requires the Department of Children and Families (DCF) to (1) establish guidelines for using and managing psychotropic drugs with children and

youth in its care and (2) establish and maintain a data base to track the use of such drugs among children and youth committed to it by a court. It must do these tasks within available resources and with the help of the UConn Health Center.

EFFECTIVE DATE: Upon passage for the Child Poverty Council and plan; October 1, 2004 for the DCF drug tracking.

CHILD POVERTY REDUCTION PLAN

Child Poverty Council

The act establishes the Child Poverty Council. The council consists of the House speaker and minority leader, the Senate president pro tempore and minority leader, the OPM secretary, and:

1. the commissioners of children and families, social services, correction, public health, mental retardation, mental health and addiction services, health care access, economic and community development, transportation, education, and labor;
2. the Board of Governors of Higher Education, Children's Trust Fund, and State Prevention Council chairmen;
3. the child advocate; and
4. the Children's Commission executive director.

The secretary, or his designee, is the council chairman. He is responsible for coordinating the council's activities, including scheduling and presiding over meetings and hearings.

The act does not appropriate funds for the council, but it permits it to accept and use funds from public and private sources.

Plan Contents

The council must develop a 10-year plan to reduce the number of children living in poverty in Connecticut. The plan must:

1. identify and analyze the occurrence of child poverty in the state;
2. analyze the long-term effects of child poverty on children, their families, and their communities and its costs to the state and towns;
3. inventory statewide public and private programs that address child poverty, analyze their deficiencies or inefficiencies, and identify the percentage of the target populations they serve and their current state funding levels; and
4. contain procedures and priorities for implementing strategies to achieve the 50% reduction.

The procedures and priorities for child poverty reduction strategies must include:

1. vocational training and placement to promote career progress for parents of children living in poverty;
2. education, including higher education, preliteracy, literacy, and family literacy;
3. housing for parents and children;
4. day care, after-school, and mentoring programs for children and single parents;
5. access to health care, including mental health and family planning;
6. treatment programs and services for children and parents, including those for substance abuse; and
7. accessible child nutrition programs.

In developing the plan, the council must consult with experts, service providers, and parents of children

living in poverty. It must also hold at least one public hearing on the plan and may, based on the hearing testimony, make any modifications to the plan that it deems needed.

Reporting

The council must submit its plan, including recommendations for legislation and funding, to the Appropriations, Human Services, and Children's committees by January 1, 2005. It must then report annually to these committees on the plan's implementation and the extent to which state actions conform to it. The first report is due by January 1, 2006.

PA 04-20—SB 505
Commerce Committee

**AN ACT CONCERNING TECHNICAL
REVISIONS TO COMMERCE RELATED
STATUTES**

SUMMARY: This act makes technical corrections to several statutes concerning the Connecticut Commission on Arts, Tourism, Culture, History and Film; the regional tourism districts; and the Capital City Economic Development Authority.
EFFECTIVE DATE: Upon passage

PA 04-25—sSB 507
Commerce Committee

AN ACT CONCERNING THE FREEDOM TRAIL

SUMMARY: This act requires the Connecticut Commission on Arts, Tourism, Culture, History and Film (CATCHF) to recognize, document, and mark sites in Connecticut commemorating the abolition of slavery, the Underground Railroad, and the history and movement of African-American residents toward freedom. The commission must do this in consultation with the Amistad Committee, Inc. of New Haven. (PA 04-2, May Special Session, changed the commission's name to the Connecticut Commission on Culture and Tourism.)

The act also requires the CATCHF, in consultation with the Amistad Committee, to establish a Freedom Trail. It drops prior requirements that CATCHF, in conjunction with the Amistad Committee, establish and mark with plaques, a trail related to minority history.

The act also makes the Amistad Committee, Inc. responsible for coordinating and organizing the September Freedom Trail Month.
EFFECTIVE DATE: Upon passage

PA 04-106—SB 203
Commerce Committee
Finance, Revenue and Bonding Committee

**AN ACT CONCERNING BONDS ISSUED BY THE
CONNECTICUT DEVELOPMENT AUTHORITY
AND ITS SUBSIDIARIES ON BEHALF OF
MUNICIPALITIES FOR REMEDIATION
PROJECTS**

SUMMARY: This act makes projects involving the clean-up and productive reuse of contaminated sites eligible for bonds the Connecticut Development

Authority (CDA) issues on behalf of towns. The law already allows CDA or its subsidiaries to issue these bonds for projects that develop or redevelop contaminated sites if, among other things, they add or support significant new economic activity or employment in the town. CDA's authority to issue bonds for these projects expires July 1, 2005.

The act makes it easier to finance projects where some or all of the taxes are delinquent for more than one year and that involve a vacant, underused, or deteriorated building. Prior law allowed towns to issue bonds to finance these projects by calculating the difference between the amount of taxes the tax delinquent property was supposed to generate and the amount it was expected to generate after it had been cleaned up and redeveloped (i.e., tax increment financing).

The act allows towns to calculate the increment in a way that increases the amount of tax revenue available to repay the bonds. It allows them to calculate the increment based on an amount that is less than the taxes the property actually generated and the amount it is expected to generate after redevelopment. The act requires CDA to include this amount when underwriting the bonds it sells on behalf of the town to finance the projects.

EFFECTIVE DATE: Upon passage

**CALCULATING THE PROPERTY TAX
INCREMENT**

The act lets towns use another method to calculate the property tax increment used to secure bonds CDA issues on their behalf to clean-up and improve a contaminated property. CDA can issue bonds for these projects if the property is tax delinquent for more than one year and contains vacant, underused, or deteriorated buildings. Under prior law, towns could calculate the increment only by determining the amount of revenue the unimproved property would have generated by applying the current mill rate or formula for in-lieu payments against the property's value. They then had to subtract this amount from the amount the improved property generates based on those same rates.

Alternatively, the act allows towns to reduce the unimproved property's assessed value and apply the mill rate to that value. Calculating the difference in this manner increases the difference between the tax levels used to calculate the increment (i.e., the taxes before and after the improvement). But towns cannot reduce the value to the point where the taxes due are less than the amount of taxes that were actually paid on the property during the most recently completed fiscal year. They can use the alternate method only if their legislative body authorized it in the resolution approving the project.

PA 04-120—sHB 5242*Commerce Committee**Government Administration and Elections Committee**Planning and Development Committee**Environment Committee***AN ACT CONCERNING THE FUNDING OF THE CONNECTICUT RURAL DEVELOPMENT COUNCIL**

SUMMARY: This act creates in statute a council that currently exists as a creation of a 1980 executive order. In accordance with the Federal Farm Security and Rural Investment Act of 2002 (P.L. 101-171), the act creates the Connecticut Rural Development Council, which was first established by Executive Order 31 in accordance with the Federal Rural Development Act of 1980 (P.L. 96-355). The federal acts complement each other in their single effort to get federal, state, and local agencies and groups to work together to address rural needs.

This act requires the council's board, members, and duties to comply with federal law. Consistent with this requirement, the council's current board of directors consists of representatives of federal, state, local, and tribal governments; private sector organizations; and other organizations committed to rural development. Any interested person or organization can join the council but must attend its meeting regularly in order to vote.

The council monitors, reports, and comments on the extent to which policies and programs coordinate the efforts of state, federal, tribal, and private groups to increase efficiency, eliminate duplication, identify gaps, and promote rural interests. The council also determines if rural development programs help rural towns gain fiscal autonomy.

EFFECTIVE DATE: July 1, 2004

PA 04-193—sSB 206*Commerce Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING TECHNICAL REVISIONS TO THE AUTHORITY OF THE CONNECTICUT DEVELOPMENT AUTHORITY TO FUND PROJECTS**

SUMMARY: This act expands the range of financial assistance the Connecticut Development Authority (CDA) can provide and the purposes for which it may offer such assistance. It allows CDA to invest the proceeds from the bonds it issues in projects in addition to using the proceeds to make or guarantee loans or

extend credit. The law already allows CDA to use the proceeds of state general obligation bonds to make equity investments. These proceeds fund CDA's Connecticut Growth Fund and Connecticut Works Fund programs, each of which provide different types of financing for economic development projects.

The act allows CDA to use the proceeds from its bonds to invest in or finance the expansion of existing projects or their continued operations. It also allows CDA to finance projects involving new material, works in progress, stock in trade, or stock of a corporation.

EFFECTIVE DATE: Upon passage

PA 04-235—HB 5245*Commerce Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING THE RESEARCH AND DEVELOPMENT TAX CREDIT EXCHANGE**

SUMMARY: This act makes state refunds for unused research and development (R&D) tax credits permanent. Prior law authorized refunds only for 2003 and 2004. A business qualifies for a refund if it:

1. grossed less than \$70 million in the prior year without counting transactions with a related business and
2. paid the alternative capital base corporation tax when it reported no income against which to apply the credits.

The refund equals 65% of the value of the unused credits.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2002.

BACKGROUND*R&D Tax Credit Refunds*

The law requires the state to refund R&D tax credits a business cannot claim during a tax year in which it owes no taxes. The credit amounts are based on the business' R&D expenditures. The business can calculate that amount under two laws. One allows it to claim a credit when it increased R&D spending over the prior year. The credit equals 20% of the increase in R&D spending. The other law allows the business to claim a credit against the R&D spending they can deduct from their federal income taxes. They must determine that amount according to a statutory formula.

PA 04-15—HB 5428

Education Committee

**AN ACT CONCERNING SCHOOL READINESS
STAFF QUALIFICATIONS**

SUMMARY: By law, on and after July 1, 2004, school readiness programs must have a person in each classroom with at least: (1) nine or more credits in early childhood education or child development from an accredited higher education institution and a credential from an organization approved by the education commissioner or (2) an associate's or four-year degree in early childhood education or child development.

Beginning July 1, 2005, this act increases the minimum required number of early childhood education or child development credits from nine to 12 for staff holding credentials from a commissioner-approved organization. It also expands the qualifications of people who may serve as school readiness staff to include:

1. certified early childhood or special education teachers and
2. anyone with an associate's or bachelor's degree who has at least nine, and starting July 1, 2005, at least 12 credits, rather than a major, in early childhood education or child development.

EFFECTIVE DATE: July 1, 2004

PA 04-26—SB 534

Education Committee

**AN ACT CONCERNING MINOR TECHNICAL
REVISIONS TO THE EDUCATION STATUTES**

SUMMARY: This act makes technical changes in education laws.

EFFECTIVE DATE: Upon passage

PA 04-57—sSB 531

Education Committee

**AN ACT CONCERNING EDUCATION
TECHNOLOGY PROGRAMS**

SUMMARY: This act expands the permissible uses of State Department of Education (SDE) educational technology program grants for school districts to include wireless connectivity, as well as traditional wiring and connectivity, computers, and software.

It requires superintendents to affirm in their school construction grant applications that the school district considered using wireless connectivity technology in their school building, alteration, or renovation projects.

Finally, the act shifts primary responsibility for biennially updating (1) a statewide teacher and administrator competency standard for the use of technology for teaching and (2) a statewide plan for achieving this standard from the Commission for Educational Technology to SDE. The commission is still responsible for assessing the resources necessary to achieve this goal and submitting the plan to the legislature.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Commission for Educational Technology

The legislature created the Commission for Educational Technology in 2000. It is composed of 20 leaders from education, business, information technology, and government. It is responsible for managing and successfully integrating technology in Connecticut's schools, libraries, colleges, and universities.

PA 04-137—SB 533

Education Committee

Appropriations Committee

**AN ACT CONCERNING TEACHERS'
EVALUATIONS**

SUMMARY: The act allows teachers and school administrators to file grievances if a school district fails to follow the established procedures of its teacher evaluation program.

By law, local school boards must establish and implement evaluation programs that meet both State Board of Education (SBE) guidelines for such programs and any other guidelines the local boards and the unions representing their teachers and administrators mutually agree on. The evaluation programs apply to all professional employees below the rank of superintendent who hold SBE-issued certificates or permits.

Under both prior law and the act, evaluation programs themselves are not subject to collective bargaining. But the act allows a teacher or administrator to file a grievance claiming that the evaluation procedure a school district followed in a particular case differed from its established procedures. Such grievances may be filed only according to grievance procedures in collective bargaining agreements negotiated after July 1, 2004.

EFFECTIVE DATE: Upon passage

PA 04-138—SB 536*Education Committee***AN ACT CONCERNING NATIONAL BOARD CERTIFICATION**

SUMMARY: This act requires the State Board of Education (SBE) to issue a Connecticut provisional or professional educator certificate with appropriate endorsement to nationally board-certified teachers from out of state who meet certain conditions. (An endorsement specifies the subject or grade level that a certified teacher may teach.) Under prior law, to receive a provisional or professional certificate, all out-of-state teachers had to meet the requirements for Connecticut certification and pass Connecticut's teacher certification exams.

The act requires SBE to issue a Connecticut provisional or professional certificate to any teacher from another state, U.S. possession or territory, the District of Columbia, or Puerto Rico who (1) applies; (2) has taught for at least three of the past 10 years in another state, U.S. possession or territory, the District of Columbia, or Puerto Rico; and (3) holds a national board certification from an organization the education commissioner considers appropriate. (The only organization granting national teacher certification is the National Board for Professional Teaching Standards.) Under the act, SBE must give such a teacher a provisional educator certificate, which is Connecticut's second-level teaching certificate, unless he has completed 30 credits of qualifying graduate-level coursework, in which case SBE must give him a professional educator certificate (the highest-level certificate).

The act still allows SBE to deny a certificate to a nationally certified out-of-state teacher for the same reasons it can deny any other applicant, namely because (1) the teacher seeks the certificate through fraud or misrepresents a material fact; (2) the teacher has been convicted of a crime involving moral turpitude or some other crime that, in SBE's opinion, would impair the standing of the state's teaching certificates; or (3) it has other due cause. A teacher denied certification can ask SBE to review its decision.

EFFECTIVE DATE: July 1, 2004

BACKGROUND*Provisional and Professional Educator Certificates*

A provisional educator certificate is valid for a maximum of eight years and requires a teacher to have:

1. one school year of successful teaching in a Connecticut public school and completed the

Beginning Educator Support and Training (BEST) Program, if available;

2. three years of successful teaching in the past 10 in a public or approved private school in Connecticut or another state; or
3. successful teaching experience in the preceding school year under a Connecticut provisional certificate as an employee of a Connecticut board of education or an SBE-approved special education facility.

A professional educator certificate is renewable every five years and is issued to a teacher who has taught successfully for three years under a provisional certificate and has completed 30 credits of qualifying graduate-level coursework.

PA 04-153—sHB 5577*Education Committee**Government Administration and Elections Committee**Appropriations Committee***AN ACT ENCOURAGING INTERNATIONAL STUDIES PROGRAMS**

SUMMARY: This act expands the duties of the International Education Advisory Committee by requiring it to (1) develop criteria and guidelines for international studies programs, as well as partnership programs between Connecticut public schools and foreign schools, known as sister school partnerships and (2) submit them to the State Board of Education (SBE) for review and approval. The act also requires the committee to advise the SBE on incentives to encourage the formation of partnership programs, such as cooperation in teacher certification, student assessment programs and course credit recognition, summer program participation, and other low-cost measures that would maximize the partnerships' benefits.

The act authorizes SBE to recognize these programs and allows foreign schools to receive professional development and technical assistance under the partnership program, within available appropriations, under the same conditions as Connecticut public schools.

EFFECTIVE DATE: July 1, 2004

PA 04-168—sSB 152*Education Committee**Environment Committee***AN ACT CONCERNING REQUIREMENTS FOR SCHOOL ROOFING PROJECTS**

SUMMARY: This act allows the education commissioner to reduce the minimum roof pitch in school construction project plans submitted for the total replacement of existing roofs, if certain conditions are met. It also provides a window for local and regional boards of education to apply to reduce the roof pitch in plans that have already been submitted or approved. Finally, the act requires a report on the number of reductions sought and granted under this provision.

EFFECTIVE DATE: Upon passage

MINIMUM ROOF PITCH REQUIREMENTS FOR TOTAL REPLACEMENT OF EXISTING ROOFS

Prior law prohibited the State Department of Education (SDE) from approving a school building project plan that incorporated new roof construction or total replacement of an existing roof if it did not provide for a minimum roof pitch of one-half inch per foot. The act reduces the minimum pitch for total replacement of an existing roof to one-quarter inch per foot with the education commissioner's approval.

The commissioner can approve this reduction only if a local or regional board of education provides written certification from a licensed architect or engineer that all of the following conditions have been met:

1. the flatter roof will not be more likely than the steeper roof to impede drainage or cause pooling of water that may leak into the building;
2. it would cost substantially more and take substantially longer to replace the roof with the steeper pitch; and
3. substantial rebuilding of the existing building would be required to support the roof with the steeper pitch.

PLANS SUBMITTED OR APPROVED SINCE JULY 1, 2003

The act allows boards of education that have submitted or had total existing roof replacement project plans approved since July 1, 2003 to apply to the education commissioner before June 30, 2004 to reduce the roof pitch in their plans. July 1, 2003 is the date the former minimum roof pitch requirements took effect.

REPORT TO THE GENERAL ASSEMBLY

Finally, the act requires SDE to report to the Education and Environment committees by January 1, 2005 on the number of boards of education that have requested a reduction in the roof pitch requirement and the number of requests it has granted.

PA 04-181—sHB 5429

Education Committee

Public Health Committee

AN ACT CONCERNING ADMINISTRATION OF MEDICATION IN SCHOOLS, CONCERNING SCHOOL NURSES, AND REPEALING AN OBSOLETE SECTION OF THE STATUTES

SUMMARY: This act:

1. makes statutory the requirement that school boards adopt written policies and procedures for administering medication in schools and changes the approving authority for such policies and procedures from the Department of Public Health (DPH) to the local school medical adviser or other qualified physician;
2. requires nurses and nurse practitioners that provide health services to students in a public or private school to submit to criminal background checks even if they are not directly employed by the local school board or private school;
3. requires regional education service centers (RESCs) to arrange for the fingerprinting of school personnel of State Board of Education-approved endowed or incorporated academies and special education facilities upon the request of those institutions; and
4. makes a technical change.

EFFECTIVE DATE: July 1, 2004, except for the criminal background check provision, which is effective upon passage.

WRITTEN POLICIES GOVERNING THE ADMINISTRATION OF MEDICATION IN SCHOOLS

The act requires school boards that allow authorized individuals to dispense medication to students, or students to self-administer medication, to adopt policies and procedures for administering such medication in accordance with the act, existing law, and State Department of Education regulations. The school medical adviser or other qualified licensed physician must approve the policies and procedures. Once approved, medication must be administered in accordance with them.

Under current regulations, school boards must establish the policies and procedures and DPH must review and approve them.

CRIMINAL BACKGROUND CHECKS FOR SCHOOL NURSES

The act requires nurses and nurse practitioners appointed by or contracting with a local or regional board of education and those provided to private schools to offer health services to students to undergo criminal history record checks.

The law already requires such checks for (1) anyone hired by a local board of education after July 1, 1994 and (2) any worker placed in a public school under a public assistance employment program who performs a service involving direct contact with students. It also allows the supervisory agent of any private school to require any applicant for a school position or any school employee to undergo a check.

FINGERPRINTING OF ENDOWED OR INCORPORATED ACADEMY AND SPECIAL EDUCATION FACILITY PERSONNEL

The act requires a RESC, upon the request of an SBE-approved endowed or incorporated academy or special education facility, to arrange for (1) the fingerprinting of anyone required to undergo criminal background checks (as discussed above) or (2) any other method of positive identification required by the FBI or State Police Bureau of Identification.

The act requires the RESC to send the fingerprints or other positive identifying information to the State Police or the FBI, which conducts the criminal history records checks. The RESC must provide the results to the endowed or incorporated academy or special education facility. By law, RESCs must provide these services to local and regional boards of education upon request.

Currently there are three endowed or incorporated academies in Connecticut: the Gilbert School, Norwich Free Academy, and Woodstock Academy. These private schools serve as public high schools for towns in their areas.

PA 04-197—sSB 529

Education Committee

Appropriations Committee

AN ACT CONCERNING VOCATIONAL AGRICULTURAL CENTERS

SUMMARY: The act increases the maximum tuition a school district operating a vocational agriculture (“vo-ag”) center can charge other districts for each student they send to the center from 102% to 120% of the Education Cost Sharing (ECS) foundation amount. The ECS foundation is \$5,891 per student through June 30,

2005. Consequently, for FY 2005, the act raises the maximum vo-ag center tuition from \$6,009 to \$7,069 per student.

The act also repeats in the vo-ag center law (§10-64) an existing statute (§10-97(b)) allowing students living in a school district that does not offer vo-ag training to receive it in another district designated by their home district. The home district must fund their training and transportation. Since this provision was already law, the change appears to have no substantive effect.

EFFECTIVE DATE: July 1, 2004

PA 04-213—sSB 530

Education Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING AUTHORIZATION OF STATE GRANT COMMITMENTS FOR SCHOOL BUILDING PROJECTS AND CONCERNING MANCHESTER COMMUNITY COLLEGE AS A SPONSOR OF AN INTERDISTRICT MAGNET SCHOOL

SUMMARY: This act authorizes \$280.5 million in state grant commitments for 24 school construction projects and reauthorizes 37 previously authorized projects that have changed substantially (more than 10%) in scope or cost. The reauthorizations increase estimated state grant commitments for the projects by \$111.4 million.

The act also:

1. makes the Board of Trustees of the Community-Technical Colleges (CTC) eligible for a state school construction grant of 100%, instead of the usual 95%, of the eligible cost for building an interdistrict magnet school on the Manchester Community College (MCC) campus, if the total cost does not exceed \$28 million;
2. makes the CTC board eligible to receive state interdistrict magnet school transportation, construction, and operating grants on MCC’s behalf;
3. requires all interdistrict magnet schools to operate according to the same laws and regulations that apply to other public schools;
4. forgives required repayment of a school construction grant to the state from Norwich; and
5. waives various statutory and regulatory requirements to add projects to the 2004 authorization list and make projects or project costs in several districts eligible for state school construction grants.

EFFECTIVE DATE: Upon passage

**MANCHESTER COMMUNITY COLLEGE
INTERDISTRICT MAGNET SCHOOL (§§ 20-22)**

The act makes an exception to the law setting a 95% state reimbursement limit for eligible interdistrict magnet school construction costs to allow the CTC board of trustees to receive the full cost, up to \$28 million, of constructing new facilities for Great Path Academy, an interdistrict magnet school on the MCC campus. It also waives the June 30, 2003 application deadline to add Great Path Academy to the 2004 school construction priority list, as long as the CTC board files a project application with the State Department of Education (SDE) by June 30, 2004 and meets all other school construction project requirements.

The act makes the CTC board eligible, on MCC's behalf, for the same state grants as other interdistrict magnet school operators. The grants provide funding for magnet school operating, student transportation, and eligible construction costs.

**NORWICH GRANT REPAYMENT FORGIVENESS
(§ 1(3))**

The act exempts Norwich from the requirement that it repay school construction funds it received for a project at the Buckingham Elementary School because it has redirected the building to a nonpublic school use. By law, districts must repay a portion of a state school construction grant if they take a school building funded by a grant out of service or convert it to a nonschool use during the grant amortization period. But towns may ask the state to forgive the refund and SDE must submit such refund requests to the legislature for approval. Norwich's estimated grant for the Buckingham School project was \$550,071 and the estimated refund payment would have been \$223,062.

**PROJECTS ADDED TO 2004 AUTHORIZATION
LIST**

In addition to the MCC magnet school described above, the act also waives the June 30, 2003 application deadline and adds the projects shown in Table 1 to the 2004 priority list, even if they do not receive local funding approval prior to their grant applications. In each case, the waivers are contingent on the district's filing an application by June 30, 2004 and meeting all other school construction project requirements.

Table 1: Projects Added to 2004 List

<i>§</i>	<i>District</i>	<i>School</i>	<i>Project</i>
8	Seymour	Seymour High	Extension and alteration
9	Southington	Vocational agriculture center	New
14	Newtown	Newtown High	Alteration
15	Region 19	E.O. Smith High	Vocational agriculture equipment
26	Hartford	University High School for Science & Engineering	New interdistrict magnet

STATUTE AND REGULATION WAIVERS

The act waives school construction statutes and regulations to make certain projects or costs eligible for state reimbursement grants.

Order of Project Bid and Plan Approval

For districts and projects shown in Table 2, the act waives the requirement that districts obtain SDE approval of project plans and specifications before they offer the projects for competitive bid. It allows the districts to begin the projects and later be eligible for grants, if SDE approves their plans and specifications.

Table 2: Bid-Plan Order Waivers

<i>§</i>	<i>District</i>	<i>School</i>	<i>Project</i>
2	Norwich	Bishop Elementary	Alterations/technology
2	Norwich	Huntington Elementary	Alterations/technology
3	Region 10	Lewis S. Mills High	Partial roof replacement
4	Stamford	Stamford High	Alterations
10	Fairfield	New middle school	Phase I construction
11	Old Saybrook	Kathleen E. Goodwin	Expansion and alteration
12	Tolland	Parker Memorial	Install sewer line
13	Tolland	Tolland Middle	Install sewer line
16	Region 4	Winthrop Jr. High	Renovation and extension
17	Region 4	Valley Regional High	Renovation and alteration
18	Weston	Weston Middle	Well drilling
18	Weston	New 3-5 elementary school	Well drilling
18	Weston	Weston High	Well drilling
18	Weston	Hurlbutt	Well drilling

		Elementary	
24	Old Saybrook	Kathleen E. Goodwin	Relocatable classrooms

Deadline Extensions (§§ 6, 7 & 28)

For the previously authorized projects shown in Table 3, the act waives requirements that districts (1) obtain local funding approval within one year of state authorization and (2) start construction within two years. It gives each project until June 30, 2005 to obtain local funding approval and until June 30, 2006 to start construction.

Table 3: Deadline Extensions

§	District	Project
7	Glastonbury	New elementary school
8	Groton	New Eastern Point Elementary School
28	Bridgeport	New East End School
28	Bridgeport	New North End School
28	Bridgeport	New Barnum School

Project Description - Stamford (§ 5)

The act waives a requirement that a school construction project description be filed with the application for a state grant to allow Stamford to expand the scope of a Stamford High School alteration project to include relocatable classrooms.

Square Footage Limits – Canton and Stamford (§§ 19 & 25)

The act exempts extension and alteration projects for Canton Jr. High School in Canton and Schofieldtown Middle Magnet School in Stamford from limits on the amount of square footage eligible for state reimbursement.

Revised Enrollment Projections – New Haven (§ 27)

The act waives a requirement that projected enrollment for a school project be filed with SDE along with notice of the project, to allow New Haven to increase projected enrollments for alteration projects at Fair Haven Middle School to 930, the New Fair Haven K-8 School to 690, and the New Jackie Robinson Replacement School to 700 students.

PA 04-243—sSB 535

Education Committee

Labor and Public Employees Committee

AN ACT CONCERNING TERMINATION OF COACHES

SUMMARY: This act requires a board of education that employs an athletic coach to have the coach's immediate supervisor annually evaluate the coach and provide him with a copy of the evaluation.

When a board terminates or declines to renew the contract of a coach who has held the same position for three or more consecutive school years, the act requires that the board:

1. inform the coach of such a decision no later than 90 days after the end of the sport season covered by the contract and
2. provide the coach an opportunity to appeal the decision to the board in a manner it prescribes.

The act does not prohibit a board from terminating a coaching contract at any time (1) for reasons of moral misconduct, insubordination, or violation of the board's rules or (2) because the board cancelled the sport.

The act defines an athletic coach as a person holding a coaching permit who is hired by a board of education to coach a sport for a season.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Existing Evaluation Requirements

The law requires the evaluation of teachers, defined as professional employees below the rank of superintendent who hold a certificate or permit issued by the State Board of Education (SBE). Athletic coaches must hold a permit issued by the SBE. However, the law does not define "professional employee."

PA 04-251—sSB 343

Education Committee

Appropriations Committee

AN ACT CONCERNING LOCAL SHARE OF FUNDING FOR SCHOOL CONSTRUCTION PROJECTS AND CONCERNING GRADUATION DATES

SUMMARY: This act waives school construction statutes and regulations to allow the priority school district with the highest enrollment as of October 2003 (Bridgeport) to count federal funds as part of its local contribution to the cost of state-aided school

construction projects. By law, the state reimburses school districts for between 20% and 80% of the eligible cost of school construction projects, depending on their wealth. The remainder of the project cost is considered the local share.

The act also makes an exception to the law so a local school board that (1) set its 2004 graduation date before May 1, 2004 and (2) had to close its high school for emergency repairs may hold its 2004 graduation ceremony on the scheduled date. The board must still offer at least 180 days and 900 hours of actual school work for 2004. The law generally bars a school board from setting a firm high school graduation date that is earlier than the 185th day of its originally adopted school calendar for the year. But if a board waits until April 1 or after in any school year to set the graduation date, it can set one that provides for a minimum of 180 days of school.

EFFECTIVE DATE: July 1, 2004 for the school construction waiver and upon passage for the graduation exception.

PA 04-254—sHB 5584

Education Committee

Legislative Management Committee

Appropriations Committee

AN ACT CONCERNING EDUCATION IMPLEMENTER PROVISIONS

SUMMARY: This act:

1. eliminates the cap on annual increases to the Education Cost Sharing (ECS) grant one year early, as of July 1, 2004, instead of July 1, 2005;
2. starting with FY 2005, restores the density supplement to the ECS formula for towns with population densities greater than the state average;
3. establishes ECS grants for FY 2005;
4. allows any towns that are among the 28 poorest, but that do not meet the statutory conditions to be considered priority school districts, to apply for school readiness competitive grant funds;
5. eliminates a specific allocation for the school readiness competitive grant program for FY 2005 and obsolete language concerning allocations for FY 2003 and FY 2004;
6. permanently freezes the State Department of Education's (SDE) annual allocation for school readiness program coordination, evaluation, and administration at \$198,200, which is approximately the FY 2004 level, instead of up

to 0.5% of the annual school readiness program appropriation;

7. provides additional funds annually to priority school districts and, for FY 2005, to former priority districts;
8. changes the priority school district grant allocations for FY 2005;
9. limits the amount of any excess charter school appropriation that may be added for charter school students in FY 2005;
10. allows Amistad Academy, a New Haven charter school, to enroll up to 300 instead of up to 250 students;
11. carries forward to FY 2005 excess money remaining from specified FY 2004 appropriations to the Department of Higher Education (DHE) and SDE for various purposes; and
12. requires the Office of Policy and Management (OPM) secretary and the education commissioner to analyze the costs to the state and local school boards associated with the No Child Left Behind Act (NCLB).

EFFECTIVE DATE: July 1, 2004, except for the cost study provision, which is effective upon passage.

ECS GRANTS

Cap

After each district's ECS grant is calculated according to the ECS formula, the law limits annual aid increases to a maximum of 6%. This limit is called a "cap." Actual caps can be less than 6% because they are calculated based on wealth.

Under prior law the ECS cap was slated to expire on July 1, 2005. This act moves the expiration date up to July 1, 2004.

Density Supplement

The ECS formula formerly gave additional money to towns with population densities higher than the state average. The density supplement was not subject to the ECS cap and no town's density supplement could fall below the level it received in the previous year. The supplement was eliminated as of July 1, 2003, but the act restores it beginning July 1, 2004 for FY 2005 and thereafter.

FY 2005 ECS Grants

For FY 2005, the act gives each town an ECS grant equal to its FY 2004 grant plus 23.27% of the difference between its FY 2004 grant and its full entitlement, subject to the following constraints:

1. every town's grant must be at least 60% of its full entitlement;
2. no priority school district may receive less than \$370 per resident student;
3. every town, except Winchester, must receive at least the greater of (a) its FY 2003 grant or (b) its FY 2004 grant plus 0.07%; and
4. Winchester must receive a grant at least equal to its fixed entitlement for FY 2003 (i.e., \$6,646,668). A "fixed entitlement" is a town's full ECS formula grant, excluding prior year adjustments.

SCHOOL READINESS FUNDING

The act extends the school readiness competitive grant program to towns that are among the 28 poorest in the state, but are not considered priority school districts. These towns are: Ashford, Chaplin, Griswold, Sprague, Sterling, and Thompson. By law, towns or a regional school readiness councils can apply for competitive grants to provide spaces in school readiness programs for eligible children who live in an area served by a priority school or former priority school.

The act also eliminates the \$2,318,349 competitive grant allocation for FY 2005. Additionally, it permanently sets SDE's annual appropriation for school readiness program evaluation, coordination, and administration at \$198,200. Prior law set a cap of 0.5% of the total school readiness appropriation, except for FYs 2004 and 2005, for which \$198,199 was the administration funding limit.

PRIORITY SCHOOL DISTRICT GRANTS

Additional Funds for Priority Districts

The act provides additional funds each year to the eight largest priority districts based on population. It allocates \$1.5 million to the priority district with the largest population, \$1 million each to the districts ranked two through four, \$600,000 to the town ranked 5th, and \$500,000 each to towns ranked six through eight. Additionally, the act allocates \$250,000 each to seven towns that are considered priority districts based on wealth and mastery test performance that are not also getting the population-based supplements (see Table 1).

Table 1: Additional Priority District Annual Grants

<i>Priority District</i>	<i>Population</i>	<i>Rank</i>	<i>Annual Grant</i>
Bridgeport	139,529	1	\$1,500,000
Hartford	124,121	2	1,000,000
New Haven	123,626	3	1,000,000
Stamford	117,083	4	1,000,000

<i>Priority District</i>	<i>Population</i>	<i>Rank</i>	<i>Annual Grant</i>
Waterbury	107,271	5	\$600,000
Norwalk	82,951	6	500,000
Danbury	74,848	7	500,000
New Britain	71,538	8	500,000
Bristol	60,062	9	250,000
Meriden	58,244	10	250,000
East Hartford	49,575	11	250,000
New London	26,185	12	250,000
Windham	22,857	13	250,000
Bloomfield	19,587	14	250,000
Ansonia	18,554	15	250,000

Additional Grants For Former Priority School Districts

For FY 2005, the act allocates an additional \$200,000 to towns (1) whose population exceeds 50,000 based on the most recent census data and (2) that, for FY 2004, received a phase-out grant for districts that no longer qualify as a priority school district. This provision applies only to West Haven.

And it allocates an additional \$100,000 to smaller towns that received phase-out funds for FY 2004, a provision that applies only to Putnam.

Priority School District Grant Allocation

The act changes the FY 2005 allocation of the priority school district grant and various other education grants as shown in Table 2.

Table 2: FY 2005 Priority School District Grant Distribution

<i>Grant</i>	<i>Prior Law</i>	<i>Act</i>	<i>Increase</i>
Priority school districts	\$20,336,250	\$28,986,250	\$8,650,000
School readiness	37,576,500	44,576,500	7,000,000
Early reading	17,647,286	18,647,286	1,000,000
Extended school building hours	2,994,752	2,994,752	0
Summer school	2,599,699	3,499,699	900,000
School improvement	0	1,100,000	1,100,000

CHARTER SCHOOLS

Funding Reallocations

The law requires that, if for any fiscal year, the state appropriation for charter schools exceeds \$7,250 per

student, the excess funds must be used for proportionate increases in charter school per-student grants. For FY 2005, the act limits the additional allocation to \$110 per student (for a maximum of \$7,360 per student).

Amistad Academy Enrollment

The act makes an exception to a law that limits enrollment at charter schools, other than K-8 schools, to 250 students. It allows Amistad Academy to enroll up to 300 students. Amistad is a New Haven charter school that enrolls students in grades 5-8.

FUND CARRY-FORWARDS

The act carries forward \$120,000 of DHE's FY 2004 appropriation for the loan reimbursement and scholarship account to FY 2005 for DHE personal

services. It also carries forward the unspent balance of SDE's FY 2004 appropriation for grade four, six, and eight mastery test development and allows SDE to use the funds for the same purpose in FY 2005.

NO CHILD LEFT BEHIND (NCLB) COST STUDY

The act requires the OPM secretary and the education commissioner, or their designees, to conduct a cost study of NCLB mandates. The analysis must include an estimate of the costs to state, local, and regional boards of education minus any federal funds allocated for compliance. The study must be submitted to the Education Committee by January 1, 2005.

PA 04-43—sSB 144

*Energy and Technology Committee
Judiciary Committee*

AN ACT CONCERNING THE CALL-BEFORE-YOU-DIG PROGRAM

SUMMARY: This act increases from \$10,000 to \$40,000, the maximum civil penalty for violations of the state's call before you dig (CBYD) laws, which govern excavations near utility lines. It also provides for a \$1,000 maximum penalty for a utility's failure to properly mark the location of underground facilities or to mark them by the deadlines specified by Department of Public Utility Control regulations if the violation (1) was not the result of the utility's gross negligence and (2) did not cause any property damage or personal injury. It requires the Department of Public Utility Control to revise its CBYD regulations regarding a graduated schedule of penalties and the criteria the department uses to determine the amount of a penalty.

EFFECTIVE DATE: October 1, 2004

PA 04-85—sSB 145

*Energy and Technology Committee
Government Administration and Elections Committee
General Law Committee*

AN ACT CONCERNING ENERGY EFFICIENCY STANDARDS

SUMMARY: This act requires the Department of Public Utility Control (DPUC) to establish, by regulation, energy efficiency standards for specified heating, cooling, and lighting, and other types of products. DPUC must establish the standards in consultation with the Office of Policy and Management (OPM) by July 1, 2005. The act repeals existing standards for fluorescent ballasts and lamps and showerheads.

Under prior law, showerheads and fluorescent lamps that did not meet state standards generally could not be sold, offered for sale, or installed in the state. The act instead subjects the products it covers, and additional products as designated by DPUC, to this prohibition generally starting July 1, 2006. Under the act, commercial clothes washers must meet the standards by July 1, 2007; commercial refrigerators and freezers by July 1, 2008; and large packaged air conditioning equipment, by July 1, 2009.

The act requires DPUC, in consultation with OPM, to adopt procedures for testing the energy efficiency of the new products. It requires the products' manufacturers to have samples tested for compliance with the standards and certify to the OPM secretary that

they meet them. It requires DPUC, in consultation with the OPM secretary, to adopt regulations regarding certification. It also requires OPM annually to publish a list of the products requiring certification. Under prior law, the Department of Consumer Protection was responsible for adopting testing procedures and certifications regulations for fluorescent lamps and ballasts and shower hooks.

The act does not apply to products (1) manufactured in Connecticut but sold elsewhere, (2) manufactured outside the state and sold at wholesale here for retail sale and installation outside of the state, (3) installed in mobile homes at the time of construction, or (4) designed expressly for installation and use in recreational vehicles.

The act eliminates a requirement that the commissioners of agriculture and consumer protection investigate complaints of violations of the law, have inspections made of the products covered under prior law, and report the results to the attorney general. By law, violators are subject to a civil penalty of \$250 for each violation, with each day constituting a separate offense.

EFFECTIVE DATE: July 1, 2004

AFFECTED PRODUCTS

The act requires DPUC, in consultation with the OPM secretary, to adopt standards by July 1, 2005 for the products described in Table 1.

Table 1: Affected Products

<i>Product</i>	<i>Definition</i>	<i>Standard</i>
Torchiere lighting fixtures	Portable lamps with a bowl reflecting light upward for indirect illumination	Can consume no more than 190 watts and cannot be capable of operating lamps that total more than 190 watts
Unit heaters	Fan-type commercial heater that burns natural gas or propane, excluding products subject to federal regulation or certain direct-vent forced-flue heaters, or any oil fired heating system	May not have pilot lights and must have either power venting or an automatic flue damper
Low-voltage	Transformers	National Electrical

dry-type transformers	that (1) have input voltage of up to 600 volts; (2) are between 14 and 2,501 kilovolt amperes in size; (3) are air, rather than oil-cooled; and (4) are included in relevant California regulations	Manufacturers Association Standard TP-1-2002, Table 4-2
Commercial refrigerators and freezers	Several types of products with less than 85 cubic feet of capacity, other than walk-in or consumer models regulated under federal law	Cal. Code of Regulations § 1605.3, Table A-6, as effective August 1, 2004
Traffic signal modules	Light sources, lenses, and other parts needed for a standard eight- or 12-inch traffic light	Energy Star requirements that took effect February 2001
Illuminated exit sign	An internally illuminated sign designed to be permanently fixed in place, in which a light source illuminates the signs or letters	Version 2.0 specifications of the Energy Star requirements
Large packaged air conditioning equipment	<ul style="list-style-type: none"> • Packaged air conditioning units with 240,000 to 760,000 British Thermal Units (BTUs) of capacity • Packaged units with 761,000 BTUs or more of capacity 	<ul style="list-style-type: none"> • Energy efficiency ratio (EER) of 9.8 for units with gas heating and electric air conditioning and 10.0 for all electric units • EER of 9.5 for units using electricity for air conditioning and gas for heating and 9.7

		for all electric units
Commercial clothes washers	Soft-mounted washers designed to serve more than one household or for use in commercial applications if the washer is below a specified size	Cal. Code of Regulations § 1605.3, Table P-3

DPUC, in consultation with the Department of Transportation, can waive the traffic signals standard when it determines that it would compromise safe operation.

PRODUCTS DESIGNATED BY THE DPUC

The act requires DPUC, in consultation with the OPM secretary, to adopt regulations to establish efficiency standards for additional products. To do so, the secretary must determine that (1) the standards would promote energy conservation and be cost-effective for consumers who buy and use them and (2) multiple products are available that meet the standards. Such standards cannot take effect earlier than one year after their adoption.

In addition, by July 1, 2007 and every two years thereafter, DPUC, in consultation with the OPM secretary, must review the standards for the products covered by the act. DPUC can increase the standards subject to the same conditions that apply to newly designated products.

PA 04-86—sSB 148

Energy and Technology Committee

AN ACT CONCERNING DIRECT BILLING BY ELECTRIC SUPPLIERS

SUMMARY: This act requires the Department of Public Utility Control to adopt regulations by January 1, 2005 to allow competitive electric suppliers to provide direct billing and collection services for commercial and industrial customers who (1) choose this option and (2) have a demand meter or whose peak demand is at least 500 kilowatts. The supplier can provide these services for the power itself and for the related costs mandated by federal law for congestion on the transmission system. Under prior law, only distribution companies (Connecticut Light & Power and United Illuminating)

could provide these services. Once the regulations are adopted, the distribution companies cannot provide billing and collection services to customers who choose to be billed directly by their supplier.

The act prohibits suppliers from disconnecting service or otherwise terminating the physical delivery of electricity to such customers. It also makes conforming changes.

EFFECTIVE DATE: October 1, 2004

PA 04-103—SB 150

Energy and Technology Committee

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING GAS PIPELINE SAFETY

SUMMARY: This act requires the operator of a gas pipeline or related facility to make available to the Department of Public Utility Control (DPUC) all records and information on the pipeline or facility, if it is involved in an accident that DPUC investigates. The information and records include integrity management plans and test results. The act requires the operator to give DPUC all reasonable assistance in its investigation of the accident.

DPUC regulates gas pipeline safety under state law and under authority delegated to it by the U.S. Department of Transportation (USDOT) under federal law. The act authorizes an additional civil penalty for certain violations of the state and federal pipeline safety laws. It specifies that the ability to impose these penalties does not limit DPUC's ability to impose criminal penalties for obstructing the department or making false entries and returns.

The act also repeals an obsolete provision on facilities subject to Federal Energy Regulatory Commission jurisdiction.

EFFECTIVE DATE: October 1, 2004

CIVIL PENALTIES

Under prior law, the maximum penalty for most gas pipeline offenses was \$25,000 per day per violation. But, the maximum was \$500,000 for (1) violations of the state laws on accidents and compacts that DPUC has entered into with USDOT and (2) a related series of violations. The act instead sets the maximum penalty as that established under federal law. Under federal law, the maximum penalty for most single violations and for a series of violations is the same as prior state law (i.e., \$25,000 or \$500,000 depending on the violation). However, the maximum penalty for violations of liquefied natural gas pipeline standards and financial

responsibility requirements is \$50,000 per violation, which can be added to the generic penalty.

PA 04-180—sHB 5416

Energy and Technology Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING USE OF ELECTRIC RATE REDUCTION BONDS FOR GENERAL FUND PURPOSES AND THE GROSS EARNINGS TAX ON THE SALE OF NATURAL GAS

SUMMARY: This act exempts certain electric company revenue subject to a temporary transfer to the General Fund from the utility company gross earnings tax. It makes minor changes to the law authorizing the issuance of revenue bonds in connection with this transfer and electric companies' stranded costs.

The act exempts from the gross earnings tax money a gas company makes by selling gas to an existing combined cycle plant that generates electricity using three gas turbines with a total capacity of 775 megawatts. In a combined cycle plant, the heat created by burning fuel to produce electricity is recycled to produce more electricity.

The law exempts sales of gas and electricity for use in manufacturing from the tax. The act specifies that sales of gas used to operate a cogeneration facility providing electricity or steam for use in manufacturing fall within this exemption if the facility is located entirely on the manufacturer's premises. The exemption applies whether or not the manufacturer owns or operates the cogeneration facility.

EFFECTIVE DATE: Upon passage

GROSS EARNINGS TAX

Legislation passed in 2003 temporarily transfers to the General Fund revenues from charges on electric bills that pay for conservation and renewable energy programs. It authorizes the issuance of bonds, backed by another charge on electric bills, to mitigate the reduction in funding for the programs. The bonds are issued through the state, but are not state obligations. The charges that back these bonds are the property of the state, not the electric company. The act exempts the revenue from these changes from the utility company gross earnings tax.

RELATED PROVISIONS

The law authorizes the issuance of bonds to reduce the impact on utility rates of the electric companies' stranded costs. These were costs the companies incurred, with the approval of the Department of Public

Utility Control (DPUC), whose continued recovery through rates was jeopardized when electric industry competition began.

By law, both the standard costs and the conservation/renewable energy bonds are issued by a “financing entity,” which can be the state (acting through the treasurer), a special purpose trust, or state-authorized entity. If the state issues the bonds, the Office of Policy and Management secretary may make representations and agreements for the benefit of the bondholders that are needed or appropriate to make sure that the interest on the bonds is exempt from federal income tax. The act allows the treasurer to make these representations and agreements as well.

By law, DPUC must approve issuing the bonds. The act allows the DPUC to require the financing entity to make filings with respect to the security interest in the revenue that backs the bonds. These filings cannot affect the perfection of the security interest.

PA 04-200—SB 371

Energy and Technology Committee

Environment Committee

Planning and Development Committee

AN ACT CONCERNING WATER COMPANY LANDS

SUMMARY: This act modifies how the Department of Public Utility Control (DPUC) allocates the benefits of sales of water company land.

The law gives various entities a right of first refusal to buy land owned by a water company, in a specified order depending on who seeks to acquire the land and its subsequent use. The act extends these provisions to sales of reservoirs and other water supply sources and modifies the priority with regard to acquisitions by municipalities.

The act expands the corporation tax credit for donations of open space land and establishes a parallel credit for donations of land for educational uses.

EFFECTIVE DATE: Upon passage

ALLOCATION OF BENEFITS OF WATER COMPANY LAND SALES

Under prior law, DPUC had to equitably allocate the benefits of sales of water company lands that were at least partially paid for by ratepayers between the company’s ratepayers and shareholders. DPUC had to allocate the benefits substantially in favor of the shareholders if at least 25% of the land in the sale was to be used for open space or recreational purposes. It had to determine how much more than a majority of the benefits had to go to the shareholders based on the

proportion of the land that would be used for open space or recreational purposes. If all the land in the sale was to be used for open space, it had to allocate up to 100% of the benefit of the sale to the shareholders.

The act instead establishes specific allocation rules, depending on the use of the land, size of the parcel, and whether it is on or off a watershed. Table 1 describes some of these rules.

Table 1: Allocations of Benefits of Water Company Land Sales

<i>Type of Transaction</i>	<i>Allocation Rule</i>
Sale of land for an educational use	DPUC must allocate the benefits of the sale in accordance with its past practices for transactions that do not involve open space uses.
Sale of class III (off watershed and away from reservoirs) land of more than 10 acres that promotes a permanent interest in using the land for open space or recreation purposes	<p>If less than 25% of the land will be used for these purposes, 100% of the benefits must go to ratepayers.</p> <p>If 25% to 80% of the land will be used for these purposes, shareholders get 80% of the benefit for that part of the land that will be used (e.g., if 50% of the land will be used for these purposes, shareholders get 40% of the benefits (50% times 80%).</p> <p>If 80% to 90% of the land will be used for these purposes, the shareholders must get the same share of the benefits.</p> <p>If 90% or more of the land will be used for these purposes, the shareholders get 100% of the benefit.</p>

The act repeals provisions that allowed the land designated for open space or recreational purposes to be non-contiguous to class III land that was being sold under specified circumstances and prohibited this arrangement in other circumstances.

By law, a water company can sell only class I and class II land (watershed land and off watershed land close to reservoirs, respectively) to another water

company and certain other entities. The act specifies that if the land is subject to a permanent conservation easement, DPUC must equitably allocate all of the benefits between the ratepayers and the shareholders in a contested case proceeding. This is a quasi-judicial proceeding in which the Office of Consumer Counsel can participate as a party. By implication, the other allocations described in this act can be made in noncontested proceedings.

Except as provided above, DPUC must continue to allocate the benefits equitably between shareholders and ratepayers based on the facts in the case. The act appears to limit the provision allowing DPUC to allocate all of the benefits to shareholders or ratepayers to (1) transactions described in Table 1 and (2) transactions that involve less than 10 acres of land that have not been assessed as open space, farmland, or forest land under the 490 program in the previous 10 years. Under the 490 program, land is taxed based on its current use, rather than its best and highest use.

Under prior law, the water company had to use the net proceeds of the sale (whether credited to shareholders or ratepayers) only for (1) capital projects that improve or protect the water supply system or (2) acquisition of land to protect a water supply source. The act additionally allows the money to be used to acquire the source itself.

The act requires that if class III land that is sold will be used for open space or recreational purposes, the company must file with DPUC a certified copy of the conservation easement that must be recorded in the land records for the preserved land. The easement must state that this land is permanently dedicated to land uses such as public parks, forest, or natural areas such as reservoirs or water company land. The land must be preserved predominantly in its natural scenic and open space condition that may allow camping, hiking, forestry, fishing, wildlife, or natural resource conservation. The easement must prohibit all other building or development, except that required for protecting water supply sources and meeting water quality standards, if the land is used for public water supply.

RIGHT OF FIRST REFUSAL

The law gives various entities a right of first refusal to buy land owned by a water company, in a specified order depending on the acquirer and the subsequent use of the land. Under prior law, the priorities were acquisitions by:

1. a water company or municipal water utility for water supply purposes;
2. the municipality where the land is located, for open space or recreational purposes;

3. the state, for open space or recreational programs;
4. a private nonprofit land-holding organization (e.g., a land trust) for such purposes;
5. a municipality for any public purpose; and
6. the state for any public purpose.

The act adds municipal acquisitions for water supply purposes to the second priority. It specifies that educational uses constitute public purposes for which municipalities receive fifth priority. In this context, educational land uses are those for schools and related facilities.

TAX CREDITS

The law provides a credit against the corporation business tax for donations of open space land to the state, a political subdivision, or a nonprofit land conservation organization when the land will be permanently preserved as open space. The credit equals 50% of the use value of the donated land, which is its market value at its highest and best use. The credit also applies to the discount for land sold at below market price, or the discount on an interest in land, e.g., an easement. The act specifies that the value of the credit is based on the amount received for it, as well as its use value.

The act extends the credit to cover:

1. outright donations of interests in land,
2. donations or discounts of land transferred to a water company or municipal water utility, and
3. donations or discounts of land used as a public water supply source.

The act also allows the taxpayer to carry the credit forward for 15, rather than ten, years.

The act establishes a parallel credit for donations and discounts of land or interest in land transferred to municipalities and political subdivisions for educational purposes.

BACKGROUND

Classes of Water Company Land

By law, Class I land is water company property that is closest to a supply source, e.g., within 200 feet of a well, or that meets certain geological criteria, e.g., having a slope of 15% or more. Class II land is other property that is (1) within a watershed or (2) off a watershed but within 150 feet of a reservoir or a stream that flows into a reservoir. Class III land is other off-watershed land.

PA 04-226—sHB 5422*Energy and Technology Committee***AN ACT CONCERNING
TELECOMMUNICATIONS COVERAGE PLANS**

SUMMARY: This act requires the chief elected official of each municipality to report to the Connecticut Siting Council, by October 1 annually, the location, type, and height of each existing telecommunications tower and each existing and proposed antenna subject to local jurisdiction. (By law, municipalities have jurisdiction over certain towers, such as those used for radio broadcasting, and all antennas other than those located on towers that are under the council's jurisdiction.) The information can be transmitted electronically or by other means.

Under the act, by April 1, 2005, each telecommunications services provider must file with the council, on a form it prescribes, the location of antenna arrays serving cellular and personal communication services telephone operations in the state, other than those on towers. The information must be used solely to prepare a statewide coverage plan, as discussed below. This information is exempt from disclosure under the Freedom of Information Act.

The act requires the council to develop, by January 1, 2006, a statewide database on towers and antennas. It requires the council to develop a statewide telecommunications coverage plan by September 1, 2006 and requires it to annually review and revise the plan as necessary. The act allows municipalities, starting January 1, 2007, to develop local telecommunications coverage plans.

The act also allows the council to recover its expenses in developing and maintaining the database and statewide plan from the assessments it imposes on the entities it regulates.

EFFECTIVE DATE: Upon passage

STATEWIDE DATABASE

Under the act, by January 1, 2006, the council must develop a state-wide telecommunications coverage database that includes the location, type, and height of all telecommunications towers and antennas in the state, including the towers under its jurisdiction (other than those used by cable TV companies). The database must be available for public inspection in hard copy and accessible through the Internet or other media systems available to the public. The act requires the council to supply any information in the database to a municipality that requests it in preparing its coverage plan. The council must maintain the database and update it quarterly.

STATEWIDE PLAN

By September 1, 2006, the council must develop a plan for statewide telecommunications coverage. The plan must be consistent with the federal 1996 Telecommunications Act and state laws on telecommunications company regulation and sharing of telecommunications towers. The act requires the plan to contain information on population growth in the state and an analysis of existing and projected demands for telecommunications coverage. By November 1, 2006, the council must supply all the information contained in the plan concerning a municipality (or an abutting or adjoining municipality) to any municipality that requests it under the zoning laws or any special act regulating the siting of telecommunications towers.

MUNICIPAL PLANS

By January 1, 2007, the act allows municipalities to develop telecommunications coverage plans. Each town's plan must consider the information provided to the municipality under the state wide plan. It may include a map of all existing telecommunications towers and antennas, radio frequency propagation modeling of existing coverage, hypothetical coverage from alternative sites, and identification of sensitive areas for restrictive use. The plan may identify one or more areas in the town where applications to site towers that meet established criteria may receive expedited consideration.

The plan must be consistent with (1) the provisions of the 1996 Telecommunications Act governing the siting of wireless telecommunications facilities, (2) related federal regulations, (3) tower sharing provisions of state law, and (4) the statewide telecommunications coverage plan. Upon request, the council must help a municipality in preparing its plan.

BACKGROUND*Related Federal Law*

The federal Telecommunications Act of 1996 restricts the ability of state and local governments to regulate the siting of wireless telecommunications facilities. Among other things, it prohibits their regulations from:

1. unreasonably discriminating among providers of functionally equivalent services;
2. effectively prohibiting the provision of personal wireless services, for example by "zoning out" wireless facilities; or
3. regulating the placement, construction, or modification of wireless facilities based on their radiofrequency emissions if they comply

with Federal Communications Commission regulations.

PA 04-236—HB 5417

Energy and Technology Committee

AN ACT IMPLEMENTING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE UTILITY LAWS

SUMMARY: This act makes technical changes in the utility laws.

EFFECTIVE DATE: Upon passage, except two changes regarding the siting of utility facilities are effective December 1, 2004.

PA 04-246—sHB 5418

Energy and Technology Committee

Environment Committee

Public Health Committee

AN ACT CONCERNING ELECTRIC TRANSMISSION LINE SITING CRITERIA

SUMMARY: By law, a Siting Council certificate is required to build electric transmission lines and certain other energy and telecommunications facilities. The act requires that an application for a certificate to build an electric or gas transmission line or an electric substation address the impact of any electromagnetic fields (EMF) the proposed facility may produce. It also requires that maps submitted with the application show residential areas, schools, and certain other land uses.

The act requires the council to adopt standards for best management practices for EMFs. By January 1, 2005, the council must report to the Energy and Technology and Environment committees its best management practices for EMFs from electric transmission lines and how the council selected these standards.

The act specifically requires the council to make findings on the impact of EMFs in deciding whether to grant a certificate for the energy (other than power plants) and telecommunications facilities it regulates. It requires that an electric transmission line be consistent with the council's best management practices.

The act eliminates a rebuttable presumption that an application for a transmission line with a capacity of 345 kilovolts or more that proposes placing the line underground in all residential areas and overhead in industrial open space areas meets the law's standards as

to public need or benefit that apply to underground and overhead lines.

The act instead establishes a presumption that transmission lines of this capacity located adjacent to residential areas and certain land uses should be buried. But it allows an applicant to rebut this presumption by showing the council that burial is technologically infeasible, taking into account the reliability of the state's electric grid. It requires that overhead portions of transmission lines be located in a buffer zone.

Under the act, if legislation passed on or after January 1, 2004 results in the reconfiguration or burial of a transmission line, all of the prudent costs incurred by an electric company as a result must be considered reasonable for purposes of the laws governing utility ratemaking and must be recovered by the company in its rates.

EFFECTIVE DATE: Upon passage, except for certain conforming provisions that are effective October 1, 2004, and applies to applications filed on or after October 1, 2003 for which the council has not already rendered a decision.

CERTIFICATE APPLICATION

The act requires applications for electric and gas transmission lines and electric substations to include an assessment of the impact of any EMF to be produced by the proposed facility.

By law, the application must include a map showing the proposed route or site and details of settled areas, parks, recreational areas, and scenic areas. The act additionally requires the map to show residential areas, private and public schools, licensed day care facilities and youth camps, and public playgrounds.

Under the act, the council must administratively note completed and ongoing scientific and medical research when it receives an application for an electric transmission line. This research becomes part of the record that forms the basis of the council's decision.

EMF BEST MANAGEMENT PRACTICES

The act requires the council to adopt standards for best management practices for EMFs. The standards must be based on the latest completed and continuing scientific and medical research on EMFs. They must require individual, project-specific assessments of EMFs, taking into consideration design techniques such as compact spacing, optimal phasing of conductors, and applicable and appropriate new field management techniques. The council can revise the standards, which are not regulations, as it considers appropriate.

DECISION CRITERIA*EMF*

By law, the council must make findings on a facility's probable impact on public health and safety, among other things, in determining whether to grant a certificate. The act requires that the findings for electric and gas transmission lines, electric substations, and the telecommunications facilities the council regulates address the EMF the facility may produce.

By law, the council cannot grant a certificate for an electric transmission line unless it finds that its overhead portions are consistent with the purposes of the Siting Council law and the council's regulations. The act additionally requires that the overhead portions be consistent with the council's standards, including its best management practices for EMF

Burial

By law, an applicant for most energy facilities must demonstrate a public need for the facility to receive a certificate. In the case of power plants and underground transmission lines, the applicant must demonstrate that the facility meets the lower standard of providing a public benefit. The act eliminates a rebuttable presumption that an application for a transmission line with a capacity of 345 kilovolts or more that proposes placing the line underground in all residential areas and overhead in industrial open space areas meets the respective standards.

The act instead establishes a presumption that placing overhead the portions of such 345 kilovolt lines that are adjacent to certain land uses is inconsistent with the purposes of the Siting Council, and thus that the application must be denied. The land uses are residential areas, private or public schools, licensed day care centers and youth camps, and public playgrounds. The applicant can rebut this presumption by demonstrating to the council that it is technologically infeasible to bury the line. In determining infeasibility, the council must consider the effect of burial on the reliability of the state's electric transmission system.

Buffer Zones

The act requires that the overhead portions of transmission lines be within a buffer zone that protects public health and safety, as determined by the council. In establishing the buffer zone, the council must, among other things, consider residential areas, private and public schools, licensed day centers and youth camps, and public playgrounds adjacent to the overhead portions of the line. It must also consider the voltage of

the portions of the line covered by the application and existing overhead lines on the proposed route. At a minimum, the existing right of way must serve as the buffer zone.

PA 04-247—sHB 5420*Energy and Technology Committee**Government Administration and Elections Committee**Appropriations Committee***AN ACT CONCERNING MINOR REVISIONS TO THE ELECTRIC UTILITY PROVISIONS**

SUMMARY: This act expands the costs associated with displaced electric industry employees that can be recovered through the systems benefits charge on electric bills. By law, the charge can cover costs incurred by companies in the industry with regard to the displacement of their own employees due to (1) the restructuring of the industry to permit competition and (2) tighter emission standards imposed on certain power plants. The act additionally allows the charge to be used to cover costs incurred by an electric company or a wholesale generator in retraining the former employee of an unaffiliated wholesale generator who was involuntarily displaced on or after January 1, 2003, except for cause.

By law, electric companies must procure part of the power they need to serve customers who do not choose a competitive supplier from renewable resources. They must enter into long-term contracts with Class I renewable resource projects that receive funding from the state's Renewable Energy Investment Fund as part of meeting this requirement. (Class I resources include wind, solar, and fuel cell power.) The companies must file these contracts with the Department of Public Utility Control (DPUC). The act requires that (1) these contracts be submitted to DPUC for its approval and (2) the projects be at least one megawatt in size, i.e., provide enough power to serve 750 to 1,000 homes. As part of its approval, the act requires DPUC to give preference to projects that provide a financial benefit to ratepayers or will enhance the reliability of the state's electric transmission system.

The act requires the Energy Conservation Management Board to file its last two reports to the Energy and Technology and Environment committees by March 1, rather than January 31, in 2005 and 2006.

EFFECTIVE DATE: Upon passage for the dislocated worker provision; July 1, 2004 for the reporting provision; and October 1, 2004 for the renewable energy provision.

PA 04-65—sHB 5240

Environment Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING FARM WASTE MANAGEMENT

SUMMARY: Under prior law, the agriculture commissioner could reimburse farmers for up to 75% of the cost of complying with a farm resources management plan that the U.S. Department of Agriculture's (USDA) Farm Service Agency or the state Department of Environmental Protection (DEP) certifies. The act:

1. increases the maximum reimbursement rate to 90% of compliance cost;
2. allows farmers to seek reimbursement (up to 90%) for the costs of complying with a DEP-approved comprehensive farm nutrient management plan (CNMP), in addition to a farm resources management plan; and
3. makes the DEP commissioner the only official who can approve farm resource management plans.

The act retains the requirement that priority be given to capital improvement reimbursement and makes it equally applicable to CNMPs. It also makes the agriculture commissioner, in cooperation with the USDA, the payment-certifying authority (replacing DEP or the USDA Farm Services Agency under prior law) for both types of programs.

A farm resources management plan must include best practices for managing farm waste to protect natural resources. A CNMP identifies the management and conservation actions that a farmer must follow to meet specific soil and water conservation goals, including nutrient management, on an animal feeding operation.

EFFECTIVE DATE: Upon passage

PA 04-84—sSB 119

Environment Committee

Transportation Committee

Appropriations Committee

AN ACT CONCERNING CLEAN CARS

SUMMARY: This act requires the environmental protection commissioner to adopt, by December 31, 2004, regulations implementing California's emissions standards for light-duty motor vehicles (passenger cars and trucks with a maximum loaded weight of 8,500 pounds) and to keep them current with changes California makes. The regulations apply beginning with the 2008 model year. The act explicitly authorizes the

commissioner to regulate motor vehicle emissions for other vehicle classes. Under prior law, Connecticut, which participates in the U.S. Environmental Protection Agency's (EPA) National Low Emission Vehicle Program, could incorporate the California standards by reference.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

California's LEV II Program

Under the federal Clean Air Act (42 USC § 7507) all new cars sold in the U.S. must comply either with emission standards set by EPA (known as Tier 2) or California (known as Low Emission Vehicle II or LEV II).

Both LEV II and Tier 2 (1) require a manufacturer's vehicle fleet to reduce average tailpipe emissions for gasoline and diesel vehicles; (2) apply passenger car standards to most light trucks and sport utility vehicles (SUVs); and (3) place tighter controls on evaporative emissions from fuel tanks and fuel systems, as well as exhaust systems.

Both LEV II and Tier 2 use a "bin" system, in which vehicle manufacturers certify particular vehicles into any of several emission bins, as long as their fleet-wide average emission meets the program standards. Tier 2 requires manufacturers to meet a fleet-wide average for nitrogen oxide (NOx) emissions. LEV II sets progressively stricter standards for hydrocarbon emissions.

The most significant difference between the California and federal standards is California's requirement that a growing proportion of a motor vehicle fleet comprise zero-emission vehicles (ZEVs). Vehicles that meet certain emission and durability requirements or that achieve near-zero emissions through the use of advanced technology and alternative fuels may be counted towards the ZEV requirements.

PA 04-96—SB 446

Environment Committee

Planning and Development Committee

Judiciary Committee

AN ACT CONCERNING MUNICIPAL CONSERVATION EASEMENTS

SUMMARY: This act specifies that the state, or any of its political subdivisions, may establish a conservation or preservation restriction on land it owns, in the same way the law already allows certain government bodies, charitable corporations, and trusts to establish them.

EFFECTIVE DATE: Upon passage

BACKGROUND

Conservation and Preservation Restrictions

By law, landowners may create conservation restrictions in written instruments to maintain land or water areas predominantly in their natural, scenic, or open condition, or in agricultural, farming, forest, or open space use. Preservation restrictions are similar, but are meant to preserve historically significant structures or sites.

PA 04-97—sSB 447

Environment Committee

AN ACT CONCERNING COMMERCIAL FISHERIES LICENSE REQUIREMENTS AND WILDLIFE PERMITS

SUMMARY: This act:

1. reinstates a moratorium on the issuance of new commercial finfish and fishing licenses, restricting licenses to people who held them anytime between June 1, 1995 and December 31, 2003 and extends the moratorium to cover lobster pot licenses;
2. allows the transfer of existing licenses under limited circumstances similar to those that applied under the former moratorium; and
3. expands reporting requirements for people in the seafood industry and adds species about which a report must be submitted.

The act also requires both a commercial fisherman and a seafood dealer to hold Department of Environmental Protection (DEP) licenses before the fisherman can sell certain species he caught in Connecticut to the dealer for resale.

The act makes the following changes that affect charter, party, and head boats. It:

1. expands what is considered a charter, party, or head boat;
2. requires a person operating these vessels for fishing to hold a current U.S. Coast Guard-issued passenger-for-hire license; and
3. limits to tuna species the part of the catch the owner, operator, or captain of these vessels can sell.

For purposes of allowing an unlicensed person to accompany and assist a person who has a commercial license, the act bases the restrictions on using commercial fishing gear on the type of gear used rather than on the type of license the person has. It distinguishes the American shad from other shad species for purposes of licensing fees. It adds fish to the

list of species that state residents and nonresidents may use or sell when they take them with lobster pots.

The act limits the exemption from the requirement to hold a DEP permit to possess, import, introduce, or liberate a live fish, wild bird, wild mammal, reptile, amphibian, or invertebrate. Under prior law, the requirement did not apply to animals in the state before October 1, 2003. Under the act, only primates that (1) weigh 50 pounds or less and (2) were imported into or possessed in the state before October 1, 2003, remain exempt from the permit requirement.

The act also makes minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage

RESTRICTION OF NEW LICENSES

The act restricts the issuance of commercial finfish, fishing, and lobster pot licenses to people who held those licenses anytime between June 1, 1995 and December 31, 2003. The previous moratorium, which did not include commercial lobster pot licenses, expired December 31, 2003.

LICENSE TRANSFER

Commercial Finfish, Commercial Fishing, or Lobster Pot License Transfer

The act allows the DEP commissioner to authorize the transfer of an active commercial finfish, commercial fishing, or lobster pot license. It requires that in all cases, the transferor be a license holder who (1) held the license for five of the eight years before his transfer request; (2) landed finfish, lobsters, sea scallops, crabs, or squid for at least 30 days in each of those years; and (3) reported the landings to the commissioner, which must be verified by seafood dealer reports.

The act bans transferring a license if the transferor's or transferee's license, registration, or vessel permit is under suspension. It additionally bans transfers to anyone whose commercial fishery license, registration, or vessel permit was revoked or suspended in the preceding 12 months. Once a license is transferred, its original holder cannot renew it. But he may acquire a new license by transfer.

The act also prohibits transferees from using a commercial fishing vessel to fish in state waters with a trawl net more than 10% longer than the longest one that the transferor used during the qualifying period.

It limits the number of lobster pots that can be transferred to the number allocated under the transferor's license. However, when the transferee already holds a commercial lobster pot license, he may use as many pots as he currently holds or the number allocated to the transferred license, whichever is greater.

The act also specifies that an active commercial fishing license means one that was renewed in the current year.

Transfer After the Death of, or Relinquishment by, a License Holder

The act allows the commissioner to transfer an active commercial finfish license or commercial fishing or lobster pot license within two years after the holder's death. It requires that the deceased person's license be active (renewed presumably in the year in which he died) and subject to the act's annual fishing requirements for regular transfer.

EXPANDING REPORTING REQUIREMENTS

The act expands who must report and the species on which they must report. Under prior reporting law, anyone who purchased certain species from commercial fishermen for resale and was a seafood dealer had to report. The act expands the reporting requirement to include anyone, other than the final consumer, who (1) purchases, ships, consigns, transfers, transports, barter, accepts, or packs certain species directly from a commercial fisherman for resale or (2) any commercial fisherman who sells, ships, consigns, transfers, or barter his catch of certain species to anyone other than a seafood dealer. But the act permits a licensed commercial fisherman to act as a seafood dealer with respect to his own catch.

The act exempts an identifiable fishing record or fishery sampling information provided or received by the DEP commissioner from the Freedom of Information Act's disclosure requirements. However, as under prior law, the commissioner may release this information with the consent of the person who made the report or for fisheries research, management and development, and conservation law enforcement.

The act adds species to the list that commercial fishermen land and must report about, but eliminates the reporting requirement for those who purchase only bait species. It (1) specifies that crabs, under the prior law's list of species, includes horseshoe crabs and (2) adds "bait species" to that list. By law, commercial fisherman and others must report to the commissioner when they land or purchase lobsters, sea scallops, finfish, crabs, and squid.

CHARTER, PARTY, OR HEAD BOATS

The law requires charter, party, and head boats to be registered with DEP. The act expands this requirement to include:

1. one-man vessels;
2. boats that operate in all Connecticut waters, rather than only in the marine district (the salt portion of a line roughly demarcating salt and freshwater fishing areas); and
3. boats that land fish in Connecticut ports, regardless of where they operate.

FISHING LICENSES

American Shad

The act changes the type of license required to take shad species other than American shad, thereby increasing the fee for other shad fishing from \$100 to (1) \$150 for Connecticut residents and (2) \$250 for nonresidents. The license fee for taking American shad remains \$100.

Commercial Fishing Assistants

Prior law restricted the use of commercial fishing gear to those with DEP licenses, but it allowed an unlicensed person to assist certain licensees. Rather than basing the decision to allow unlicensed people to assist or accompany those with commercial licenses on the type of license, the act allows unlicensed people to help when the following gear is used: gill nets, lobster pots, trawl nets, sea scallop dredges, seines, traps, fish pots, fykes, hook and line, long lines, or eel pots.

The act eliminates the requirement that people purchase a license when assisting license holders that take (1) shad, (2) finfish (other than shad or bait species) for commercial purposes, or (3) bait species in the inland and marine districts for commercial purposes.

PRIMATES

Prior law exempted from a requirement to hold DEP permit owners of live fish, wild birds, wild mammals, reptiles, amphibians, or invertebrates that were imported or introduced into the state or possessed or liberated in the state before October 1, 2003. The act eliminates the exemption thereby requiring a permit for all animals except primates (monkeys and apes) that weigh 50 pounds or less that were imported or possessed before October 1, 2003. Owners of primates that were introduced into or liberated in the state, regardless of size, and all the other animals listed above that were imported or introduced into the state or possessed or liberated in the state before October 1, 2003, must obtain permits under the act.

BACKGROUND

Report of Fishing Information

By law, the following must report information about certain species to the DEP commissioner, those: (1) engaged in commercial fishing; (2) landing certain species for commercial purposes in the state, regardless of where landed; (3) purchasing certain species from commercial fisherman for resale; (4) holding any DEP commercial fishing license; (5) licensed to take lobsters for personal use; (6) licensed to take menhaden for personal use; (7) licensed to buy for resale certain species; (8) licensed to land certain species; or (9) with a pound net registration. The information in the reports includes the number, weight, and market value of the identified species caught, landed, or purchased.

PA 04-109—SB 587

*Environment Committee
Judiciary Committee*

AN ACT IMPLEMENTING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE ENVIRONMENT STATUTES

SUMMARY: This act makes technical changes in the environmental statutes.

EFFECTIVE DATE: Upon passage

PA 04-115—sHB 5588

*Environment Committee
Appropriations Committee*

AN ACT CONCERNING FORESTRY MANAGEMENT

SUMMARY: This act (1) makes several changes in the "490" tax relief program for owners of eligible forest land and (2) authorizes the Department of Environmental Protection (DEP) commissioner to apply for certification or licensure of publicly owned woodlands and products from those woodlands under at least one of nine specified sustainable forest programs.

EFFECTIVE DATE: July 1, 2004, except for the certification provisions, which take effect October 1, 2004.

CHANGES TO 490 PROGRAM

By law, the 490 Program provides farm, forest, and open-space landowners with tax relief to reduce the financial pressure to convert their property to other uses.

Property is assessed at its current use value, rather than its market value. Forest land owners whose property meets certain criteria may apply to the state forester for the relief. Under prior law, the state forester had to determine if the trees were numerous enough, dense enough, and in proper condition to qualify as forest land.

The act eliminates the requirement that landowners apply to the state forester or that he render an opinion on the number and density of trees and their condition. Instead, it requires DEP to adopt, by June 1, 2006, regulations setting forest stocking, distribution, and condition standards. The state forester can adopt interim standards, so long as DEP publishes notice of intent to adopt the regulations not later than 20 days after the interim standards' implementation. These interim standards are valid until June 1, 2006 or until the commissioner adopts the regulations, whichever occurs first.

The act requires landowners to hire DEP-certified foresters to determine if their land meets the interim standards the state forester sets. However, the act does not similarly require certified foresters to evaluate property according to the regulatory standards that will replace the interim standards. This apparently means that certified foresters would no longer be able to certify land to these standards once the interim standards are superseded.

To qualify for classification under prior law, eligible forest land also had to consist of (1) one tract of 25 or more contiguous acres; (2) at least two tracts totaling at least 25 acres, in which no single tract is less than 10 acres; or (3) any tract of land contiguous to a forest land tract owed by the same person and designated as forest land by the state forester. Land designated as forest land before July 1, 1976 was exempt from these requirements.

The act retains the first two acreage criteria, but modifies the third. Under the act, land contiguous to a forest land tract owned by the same person can be classified as forest land only if it meets the new standards the act requires. The act eliminates the exemption for land designated as forest land before July 1, 1976, meaning that owners of such land must apply for designation under the new standards.

Evaluation of Property by Certified Foresters

Under the act, a certified forester may evaluate property for eligibility for the 490 program if (1) he has satisfactorily completed training by, and obtained a certificate from, the state forester or his designee on policies and standards for evaluating such land and (2) in the state forester's opinion, the certified forester acts according to those policies and standards. The act bars certified foresters from charging landowners fees

contingent on, or influenced by, whether the forester finds the land eligible.

Application Process

Under prior law, landowners applied directly to the state forester to see if their land qualified for the 490 program. The act instead requires them to hire a certified forester to examine the property. If the certified forester finds the land qualifies according to the state forester's standards, he must file a report with the property owner and keep a copy for himself. The report must be on a form the state forester prescribes. It must describe (1) the land; (2) forest growth; (3) forest management activities to maintain the land in proper forest condition; and (4) other information the state forester may require as measures of forest stocking, distribution, and condition. The report must include the certified forester's name, address, and certificate number, and his signed, sworn statement that he determined that the land conforms to the state forester's stocking, distribution, and condition standards.

Classification on Grand List

Under prior law, an owner of land the state forester had designated as forest land could apply to the town assessor for classification on the grand list as forest land for purposes of the 490 program. Under the act, owners applying for such classification must have their property evaluated by a certified forester and include a copy of his report in their application. As under existing law, an owner must file the application within 30 days before or after the assessment date. The application must be on a form the assessor prescribes and the DEP commissioner approves. In addition to a description of the evaluated property required under existing law, the application also must include the date the certified forester issued his report and its potential tax liability under the 490 program. The assessor must classify the land as forest land if he finds it is still in use as forest land at the time of the assessment.

Cancellation of Forest Land Designation

Under prior law, the state forester had to issue a certificate in triplicate whenever he cancelled a forest land designation, with copies going to his office, the property owner, and the town assessor. The act does not specify who may cancel a designation. However, it requires the assessor to issue notice of any cancellation, providing copies to the landowner and to the assessor of any other municipality in which the owner's land is classified as forest land.

Appeal Process

Under prior law, an aggrieved town or landowner could appeal the state forester's decision to Superior Court within 30 days of the state forester's determination. The act instead authorizes them to appeal a certified forester's decision to the state forester. The appeal must be filed in writing within 30 business days after the certified forester issues his report. The state forester must review the report and information on which the certified forester relied. He may gather any additional information he needs. He must issue his decision within 60 calendar days of the appeal's filing. As under prior law, the aggrieved town and landowner have the same rights and remedies for appeal and relief as taxpayers aggrieved by decisions of assessors or boards of assessment appeals.

Annual Report

The act requires assessors in each town in which forest land is located to report each June to the state forester, in a format he prescribes: (1) the total number of owners of land classified as farm, forest, and open space land, as of the most recent grand list and (2) a list of the parcels of land classified as farm, forest, and open space land. The list must include (1) the acreage of each parcel; (2) the total acreage of all such parcels; (3) the number of acres of each parcel classified as farm, forest, or open space land; and (4) the total acreage of all such parcels. This apparently requires the listing of the total acreage owned by each owner of farm, forest, or open space land, including land not so classified.

CERTIFICATION OF STATE WOODLANDS

The act authorizes the DEP commissioner to (1) apply for certification or licensure of publicly owned woodlands and products from those woodlands under at least one of nine specified sustainable forest programs and (2) implement any sustainable forestry practice needed to obtain certification or licensure. It authorizes him to accept gifts, donations, and bequests on DEP's behalf to pay for the applications.

Under prior law, the commissioner had to deposit all proceeds from the management of state forests in the General Fund. The act requires him to deposit in the DEP's Conservation Fund annual proceeds from the sale of wood, timber, and other products from publicly owned woodlands that exceed \$875,000. DEP uses the fund to administer its central office and its conservation and preservation programs.

Certification and Licensure Programs

The commissioner may apply for certification or licensure under at least one of the following sustainable forest programs:

1. Sustainable Forestry Initiative Program,
2. American Tree Farm System,
3. Canadian Standards Association's Sustainable Management System Standards,
4. Finnish Standard,
5. Forest Stewardship Council,
6. Pan-European Forest Certification Program,
7. Swedish Standards,
8. United Kingdom Woodland Assurance Scheme, and
9. Smart Wood Program administered by the Rainforest Alliance.

These programs employ a variety of environmental principles, such as protecting water quality, preventing soil erosion, promoting biodiversity, and protecting endangered species to ensure that woodlands remain healthy and productive.

BACKGROUND

Certified Foresters

By law, no one may engage in forest practices for remuneration unless he obtains a DEP certificate. There are three classifications of commercial forest practitioners: forester, forest products harvester, and supervising forest products harvester.

PA 04-129—HB 5602

Environment Committee

Finance, Revenue and Bonding Committee

Energy and Technology Committee

AN ACT CONCERNING FUNDING FOR INDOOR AIR QUALITY PROJECTS

SUMMARY: This act adds indoor air quality programs relating to energy conservation to the programs electric companies may develop and implement with funding from the Conservation and Load Management Fund. By law, the companies must use the fund to implement cost-effective energy management programs and electricity market transformation initiatives. The fund is paid for by a surcharge on retail customers of 0.3 cents per kilowatt-hour of electricity electric companies sell. EFFECTIVE DATE: October 1, 2004

PA 04-134—sHB 5611

Environment Committee

Judiciary Committee

AN ACT CONCERNING NOTIFICATION OF CONTAMINATION

SUMMARY: This act requires the owner of a contaminated parcel of land, who has notified the Department of Environmental Protection (DEP) commissioner as required by law, to post notice of contamination in a conspicuous place on the affected property and in his place of business (if one exists) no later than five days after an activity begins that increases the likelihood of human exposure to known contaminants. Activities requiring posting under the act include construction, demolition, significant soil disruption, or utilities installation. The law requires an owner to inform the DEP commissioner of certain contamination on his property after being informed about it by a technical environmental professional (TEP). By law, a TEP is anyone, including a licensed environmental professional, who collects soil, water, vapor, or air samples to investigate and remediate soil or water pollution as an employee or consultant of a public or private employer.

The act requires the DEP commissioner, no more than 10 days after receiving a notice, to forward a copy to the (1) chief elected official of the town where the contaminated property is located and (2) the state senator and representative who represent that town. It also requires the commissioner to maintain a list on DEP's website of all contamination notices he receives.

Landowners who fail to post the notices must pay a civil penalty of \$100 per day for violations. The act requires the attorney general to sue the owner in Hartford Superior Court to recover the penalty upon complaint by the commissioner.

EFFECTIVE DATE: October 1, 2004

PA 04-145—sHB 5238

Environment Committee

Finance, Revenue and Bonding Committee

Judiciary Committee

Legislative Management Committee

AN ACT CONCERNING COMPANION ANIMAL HEALTH CERTIFICATES, ESTABLISHING AN ANIMAL ABUSE COST RECOVERY ACCOUNT AND THE RESTRAINT OR DISPOSAL OF DOGS

SUMMARY: This act modifies and changes several laws concerning animals. It (1) creates an account for the cost of caring for abused animals seized by the Department of Agriculture (DOAg), (2) establishes a

time limit on the validity of health certificates for cats and dogs brought into the state, and (3) requires the agriculture commissioner to adopt regulations expediting hearings on appeals involving restraint or disposal of biting dogs. The regulations must require the commissioner to make a final ruling on such appeals within 60 days of their filing.

The act also makes technical changes.

EFFECTIVE DATE: Upon passage

AUCTION OF NEGLECTED OR ABUSED ANIMALS

Auction

The act (1) creates a nonlapsing account funded by income DOAg receives when it auctions neglected or cruelly treated domestic animals after a court transfer ownership to DOAg and (2) allows the commissioner to use funds from the account or from other sources for the temporary housing, care, and welfare of animals DOAg seizes. (By law, the chief animal control officer, any animal control officer, or a municipal or regional animal control officer may lawfully seize any animal found to be neglected or cruelly treated.)

By law, after a hearing, if the court finds that an animal is neglected or cruelly treated, it may vest ownership in (1) any state, municipal, or other public or private agency that is permitted by law to care for such animals or (2) any person the court finds suitable or worthy. Under the act, when the court vests ownership of an animal in DOAg, the commissioner may have a public auction (under conditions he deems necessary) or consign the animal to a livestock auction. The act allows the commissioner to vest ownership of animals that need rehabilitative or special care to an individual or a public or private nonprofit animal rescue or adoption organization that annually places at least 10 animals as pets in private homes.

Animal Abuse Cost Recovery Account

The act requires funds received from auctioning animals be deposited in the General Fund and credited to the Animal Abuse Cost Recovery Account. Private or public funds, including those from the federal or a municipal government, may also be deposited in the account. The commissioner (1) may use funds from the account for the housing, care, and welfare of animals the department seizes and must care for until the court determines their final disposition and (2) must annually report the account's activities and status to the Appropriations and Environment committees.

COMPANION HEALTH CERTIFICATE

The act mandates that the health certificate required for any dog or cat imported into the state be issued no more than 30 days before the animal's importation date. Prior law did not specify a time limit. (By law, only a licensed, graduate veterinarian may issue the certificate.)

PA 04-151—sHB 5528

Environment Committee

Legislative Management Committee

AN ACT CONCERNING MINOR REVISIONS TO THE ENVIRONMENTAL PROTECTION STATUTES

SUMMARY: This act:

1. extends from 120 to 180 days the time the Department of Environmental Protection (DEP) commissioner has to determine if a water diversion permit application is complete, and makes other changes in the application, hearing and appeal process;
2. requires a study of, and recommendations concerning, the regulation of mercury-containing lamps scheduled to be banned starting July 1, 2006;
3. requires DEP to hold hearings on certain decisions by municipal water pollution control authorities and other agencies only when the commissioner has delegated authority for those decisions to those agencies, and restricts appeals to Superior Court;
4. modifies filing requirements for certain DEP air pollution orders and exempts orders to create or use emission reduction credits from these filing requirements;
5. allows marinas and recreational or commercial boating facilities to sell or provide gasoline containing methyl tertiary butyl ether (MTBE) to boats, ships, vessels, barges, and other floating craft as long as the seller bought and stored the gasoline on site before January 1, 2004, when the state banned the use of MTBE in gasoline;
6. expands the methods of paying for nitrogen credits;
7. allows public water supply companies to use solid by-products of water treatment processes according to best management practices and controls under a plan the DEP commissioner approves in writing;

8. changes the composition and expands the responsibilities of a council concerned with soil conservation and water erosion control;
9. combines separate construction and operating permits for air pollution sources into a single permit; and
10. repeals outdated air pollution source registration and annual fees.

EFFECTIVE DATE: Upon passage, except for the provision on solid by-products of water treatment processes, which takes effect October 1, 2004.

WATER DIVERSION PERMIT HEARING PROCESS

Prior law authorized the commissioner to seek additional information from an applicant for a water diversion permit within 120 days of its receipt. The applicant could either provide the information or ask the commissioner to regard the application as complete. In the latter case, the commissioner could make a tentative determination based on the information before him and could hold or waive a hearing according to law. An applicant aggrieved either by the commissioner's decision or the return of an incomplete application could appeal to Superior Court.

The act extends from 120 to 180 days the amount of time the commissioner has to determine if he needs additional information. Under the act, an applicant who submits an incomplete application must provide the additional information the commissioner requests; he may no longer ask the commissioner to deem it complete or appeal the return of an incomplete application to the courts. By law, if the applicant does not furnish the information, the commissioner must publish notice of his tentative determination based on the information before him and hold or waive a public hearing according to law. But the act eliminates a requirement that notice of any hearing on a water diversion permit application and of the commissioner's tentative determination on it be published twice, at least two days apart. Instead, it requires the commissioner to publish notice 30, rather than 20, days before the hearing date, and it also increases from 20 to 30 days the amount of notice the commissioner must provide various state and local officials.

STUDY OF MERCURY-CONTAINING LAMPS

Current law bans the sale of most products containing more than one gram of mercury starting July 1, 2004 and more than 100 milligrams of mercury starting July 1, 2006. It requires a working group convened by the commissioner to make recommendations by July 1, 2004 regarding the regulation of (1) products that contain between 10 and 100 milligrams of mercury, and (2) specialized lighting,

such as metal halide lamps. The act requires the working group, which includes representatives of other northeastern states, to also evaluate the uses of, and alternatives to, lamps with a mercury content of between 100 milligrams and one gram and make recommendations regarding their regulation by January 1, 2005.

DELEGATION OF AUTHORITY TO WATER POLLUTION CONTROL AUTHORITIES

The law allows the commissioner to delegate authority to state and municipal agencies for the regulation of various water discharges. It authorizes parties aggrieved by municipal agency decisions to seek a hearing before the commissioner and to appeal to Superior Court. The act specifies that such hearings and appeals can occur only if the commissioner has duly delegated authority to the agency according to law. It specifically eliminates the right to a hearing or appeal from a water pollution control authority's (WPCA) decision to deny a permit or issue an order unless the commissioner delegated the WPCA authority to make the decision. However, state zoning law still allows appeals of certain WPCA decisions to Superior Court.

FILING OF DEP AIR POLLUTION ORDERS

Prior law required the commissioner to cause certified copies of his final orders to correct air pollution violations to be filed in the land records of the town where the violation occurred. The act instead requires the order's recipient to file the certified copy of those final orders. It also requires the recipient, rather than the commissioner, to file in the land records notice that the order has been fully complied with or revoked. But the commissioner must still file the certified copy or notice if the recipient does not own the property where the violation occurred. The act requires the person filing the notice, final order, or certificate to submit a certified copy of it to the commissioner, indicating the volume and page number of the land records where it was filed. The act exempts from these filing requirements an order to create or use emission reduction credits.

AIR POLLUTION SOURCE FEES

The act repeals obsolete laws setting biennial registration fees and annual fees for air pollution sources and authorizing the commissioner to adopt regulations. However, the commissioner retains broad authority to adopt regulations necessary and proper to carry out his functions, powers, and duties. More specifically, he can adopt regulations requiring the payment of fees sufficient to cover the reasonable cost

of reviewing and acting on an application for, and monitoring compliance with, the terms and conditions of any state or federal permit, license, registration, order, certificate, or approval required to control air pollution. The law specifically authorizes him to require permits for any source regulated under Title V of the federal Clean Air Act Amendments of 1990 and to require that such sources comply with federal regulations.

NITROGEN CREDIT PAYMENTS

By law, municipal sewage treatment plants must buy credits to meet their nitrogen limits under the nitrogen credit exchange program established by PA 01-180. By law, they must pay for these credits with certified bank checks or money orders. The act authorizes payment by other methods acceptable to the treasurer, made payable to the "nitrogen credit exchange program" as long as the form of payment states "nitrogen credit purchase," on its face.

SOLID BY-PRODUCTS OF WATER TREATMENT PROCESSES

By law, the DEP commissioner may adopt regulations that exempt certain categories of material from consideration as solid waste if they are used according to standards he sets that protect the environment and public health. The act eliminates an obsolete provision requiring the commissioner to adopt regulations to facilitate the disposal of solid by-products of water treatment processes. Instead, it authorizes public water supply companies, alone or with any person or municipality, to use such solids in ways that conform to best management practices and controls described in an operations plan the commissioner approves in writing. A public water supply company may, alone or with any person or municipality, use these solids according to the plan until the commissioner issues the company a general permit for their use. By law, water companies are defined either as companies providing water to (1) at least two consumers or 25 people or (2) at least 50 consumers. It is not clear which, if either, definition applies to public water supply companies under the act.

SOIL AND WATER EROSION CONTROL COUNCIL

By law, a nine-member council coordinates DEP activities and proposes regulations in matters of soil and water erosion control. The act expands its duties to include matters of soil and water erosion conservation, rather than control, and requires it to advise and assist

the commissioner in conserving and protecting the land, water, and other state natural resources.

It replaces on the council representatives of the Agricultural Stabilization and Conservation committee and Extension Advisory Council with a representative of a nongovernmental organization appointed by the governor and a representative of the University of Connecticut Cooperative Extension System. It retains as members representatives of the five soil and water conservation district boards and the agriculture and environmental protection commissioners or their designees.

The council previously had seven ex-officio members: (1) the state conservationist, (2) Connecticut Agricultural Experiment Station director, (3) Storrs Agricultural station director, (4) state extension service director, (5) Agricultural Stabilization and Conservation Service executive director, (6) Farmer's Home Administration director, and (7) U.S. Forest Service director. The act replaces these ex-officio members with at-large, nonvoting members. It retains the first three members and replaces the remaining four with the following new members: municipal staff representatives responsible for erosion and sedimentation control, the state committee chairman of the Farm Services Agency, and a council member of a resource conservation and development area. The act does not specify the number of municipal staff representatives responsible for erosion and sedimentation control that the council must have.

By law, the commissioner may spend money he receives on behalf of the council on equipment, supplies, staff, and consultants. The act authorizes him to also spend it as needed for other at-large, nonvoting members with expertise to support the duties of the council.

CONSTRUCTION AND OPERATION PERMITS

The act eliminates the requirement that anyone seeking to build and operate an air pollution source obtain separate permits for construction and for operation, instead requiring a single permit for both. It authorizes the commissioner to require an emission test as a condition of the combined permit, rather than the operating permit, and authorizes him to revoke the construction and operation permit of anyone who violates any air pollution regulation or operates the source in an unauthorized manner.

PA 04-172—HB 5114*Environment Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING REVISIONS TO THE UNDERGROUND STORAGE TANK ACCOUNT PROVISIONS AND A STAY OF CERTAIN ADMINISTRATIVE COSTS AND ACCRUAL OF INTEREST**

SUMMARY: This act expands the circumstances under which the Underground Storage Tank Petroleum Clean-Up Account Review Board may reimburse certain homeowners and contractors for their clean-up costs. It also stays administrative and interest costs associated with the removal of lead paint for certain property owners while a criminal investigation or prosecution is pending.

EFFECTIVE DATE: Upon passage

UNDERGROUND STORAGE TANK CLEAN-UP COSTS

Under prior law, the board could order reimbursement from available funds in the residential underground heating oil storage system clean-up account for eligible residential underground storage tank remediation costs to (1) registered contractors, for eligible remediation costs incurred before July 1, 2001, and (2) owners, for eligible costs incurred after July 1, 2001. The deadline for contractors to apply was December 1, 2001. The act allows the board to reimburse owners directly for remediation costs incurred before July 1, 2001 for which the owner paid the contractor, if the board determines (1) it has not yet reimbursed the contractor and (2) the contractor may not reimburse the owner.

The act also authorizes the board to reimburse owners who paid for services completed before July 1, 2001 if the owner applies to the board for reimbursement before July 1, 2004 and (1) the registered contractor applied for reimbursement between December 1, 2001 and January 1, 2003 or (2) the owner filed a complaint with the board or commissioner before May 1, 2003 regarding the contractor's failure to apply by the December 1, 2001 deadline.

Under prior law, a contractor could receive reimbursement for work begun before July 1, 2001 only if he performed the work under a contract with a homeowner. The act allows a contractor to receive reimbursement for work he performed during this period under a contract with the state.

LEAD PAINT REMOVAL

By law, the Department of Environmental Protection (DEP) commissioner may contract to have pollution of the state's land or waters, or a toxic waste spill cleaned up, and may ask the attorney general to bring a civil action to recover the costs and expenses of such contractual obligations from the responsible party. Anyone who pollutes the state's land or waters or causes a toxic waste spill is liable for the clean-up costs and expenses of clean-up, plus (1) administrative costs of 10% of the actual costs and (2) 10% annual interest on the actual cost, starting 30 days from the date the state seeks costs and expenses.

PA 03-276 stayed for one year, from the date such costs were sought, the assessment of (1) administrative costs and (2) interest from a responsible party who owns property on which there is a residential dwelling from which DEP removed lead paint between January 1 and December 31, 2002. A licensed contractor must have removed the lead paint.

The act stays these costs and interest in such cases where (1) lead paint residue was removed with funds from DEP's emergency spill response account and (2) a federal or state criminal investigation or prosecution of a licensed home improvement contractor for causing such contamination is pending.

BACKGROUND*Underground Storage Tank Petroleum Clean-up*

This program exempts owners of residential underground storage tanks from civil liability to the state for costs related to an oil spill if the owner had the tank removed or replaced by December 31, 2001 and met certain other requirements. The law also provides reimbursement for costs of remediating spills found during the removal or replacement of the tanks.

PA 04-185—HB 5608*Environment Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING THE FUNDING OF MUNICIPAL CLEAN WATER PROJECTS AND THE REGISTRATION OF WATER DIVERSIONS**

SUMMARY: By law, any person or town who withdrew more than 50,000 gallons of water from wells or surface water in any 24-hour period before July 1, 1982 had to register these water diversions with the Department of Environmental Protection (DEP) commissioner. This act modifies reporting requirements for such people or towns for water diversions in use as

of July 1, 2001 and changes how the commissioner develops the reporting forms.

It also allows the DEP to continue to provide grants to eligible water quality projects after July 1, 2006 by repealing a law restricting such projects only to loans after that date. By law, eligible water quality projects generally receive grants for 20% of their cost and a loan for the remainder. Certain types of projects are eligible for larger grants.

EFFECTIVE DATE: October 1, 2004

REGISTERED WATER DIVERSIONS

Under prior law, people or municipalities who maintain registered diversions in use since July 1, 2001 had to report current operating data to DEP not later than six months after DEP notified them of the availability of a reporting form, and monthly data from 1997 to 2001. The reports had to include (1) the actual frequency and rate of metered withdrawals or discharges, or (2) estimates of un-metered withdrawals or discharges.

The act instead requires these people and municipalities to submit annually to DEP, for each calendar year after 2001, the most detailed available monitoring data, but does not require them to collect data on more than a daily basis. It authorizes the DEP commissioner to permit the reporting of engineering estimates for unmetered diversions.

As under prior law, these people and municipalities must file their first report no later than six months after the commissioner notifies them of the forms' availability. However, the act requires them to file subsequent reports annually by January 31. Reports for past calendar years apparently must be filed with the first report. By law, a violation of the reporting requirements is punishable by a fine of up to \$1,000.

Reporting Forms

Under prior law, the commissioner had to publish notice of the availability of a reporting form and the deadline for its submission. He had to develop the form after consulting with the public health and agriculture commissioners and the Public Utility Control Authority (PUCA) chairperson. Under the act, he must (1) instead develop multiple reporting forms in a format he determines and (2) also consult with a working group of at least five people the Water Planning Council appoints. Working group members must be selected from people required to register diversions. They serve at the council's pleasure. The council consists of the PUCA chairperson, the DEP and public health commissioners, and the Office of Policy and Management secretary, or their designees.

PA 04-189—HB 5585

Environment Committee

Appropriations Committee

Government Administration and Elections Committee

AN ACT CONTINUING THE DEPARTMENTS OF AGRICULTURE AND CONSUMER PROTECTION AS SEPARATE AGENCIES

SUMMARY: This act eliminates the merger of the departments of Agriculture and Consumer Protection authorized by PA 03-6, June 30 Special Session, and scheduled to take effect on July 1, 2004. It leaves both as stand-alone departments. It also makes conforming changes.

EFFECTIVE DATE: June 1, 2004

PA 04-191—sHB 5643

Environment Committee

Appropriations Committee

Energy and Technology Committee

Legislative Management Committee

AN ACT CONCERNING A MARINE PROTECTION AREA AND THE RECOMMENDATIONS OF THE LONG ISLAND SOUND TASK FORCE

SUMMARY: Existing law requires the Connecticut Energy Advisory Board to develop, by December 1, 2004, guidelines to evaluate proposals for alternative solutions addressing the state's energy needs. The guidelines must include environmental preference standards. The act requires the board, in developing these standards, to consider the recommendations and findings of the Task Force on Long Island Sound. The task force, created by PA 02-95, in conjunction with Governor Rowland's Executive Order 26, examined ways to provide for the region's energy needs while protecting the Sound. It issued its report in June 2003.

The act also requires the board to identify any data or information, in addition to the task force findings, that would enhance state agencies' ability to plan for, manage, and evaluate proposed uses of, and encroachment onto, the bottom of the Sound. The board must report its findings and any recommendations to the Environment Committee by January 1, 2005.

EFFECTIVE DATE: Upon passage for the board to identify additional data, and July 1, 2004 for consideration of the task force findings.

PA 04-203—sSB 547
Environment Committee
Judiciary Committee

AN ACT CONCERNING FINES FOR BANNED INVASIVE PLANTS

SUMMARY: Prior law prohibited people from importing, moving, selling, buying, possessing, cultivating, or distributing seven species of invasive plants, regardless of any municipal ordinance to the contrary. The act eliminates the prohibition against possessing such plants but bars transplanting them. The act therefore prohibits importing, moving, selling, buying, cultivating, distributing, or transplanting these invasive plants.

Regardless of any municipal ordinance to the contrary, the act imposes these prohibitions on 54 additional invasive plants starting October 1, 2004 and 20 more starting October 1, 2005. The act therefore covers a total of 81 invasive plants.

It extends, from October 1, 2004 to October 1, 2005, a prohibition against municipalities enacting any ordinance regarding the retail sale or purchase of any invasive plant. Under prior law, this prohibition ended May 1, 2004.

Under prior law, the fine for violations was a maximum of \$100. Under the act, the fine is a maximum of \$100 per plant.

By law, the Invasive Plants Council must annually report on January 1 to the Environment Committee. The act extends the council's 2005 reporting deadline by one month, to February 1, 2005.

EFFECTIVE DATE: October 1, 2004, except for the change in the council's reporting deadline, which takes effect upon passage.

NEWLY LISTED INVASIVE PLANTS

Among the 54 plants listed as invasive as of October 1, 2004 are:

1. common barberry (*Berberis vulgaris*);
2. autumn olive (*Elaeagnus umbellata*);
3. Bell's honeysuckle (*Lonicera xbella*);
4. amur honeysuckle (*Lonicera maackii*);
5. Morrow's honeysuckle (*Lonicera morrowii*);
6. common buckthorn (*Rhamnus cathartica*);
7. multiflora rose (*Rosa multiflora*);
8. Oriental bittersweet (*Celastrus orbiculatus*);
9. garlic mustard (*Alliaria petiolata*);
10. narrowleaf bittercress (*Cardamine impatiens*);
11. spotted knapweed (*Centaurea biebersteinii*);
12. black swallow-wort (*Cynanchum louiseae*);
13. pale swallow-wort (*Cynanchum rossicum*);
14. leafy spurge (*Euphorbia esula*);
15. Dame's rocket (*Hesperis matronalis*);

16. perennial pepperweed (*Lepidium latifolium*);
17. Japanese knotweed (*Polygonum cuspidatum*);
18. mile-a-minute vine (*Polygonum perfoliatum*);
19. fig buttercup (*Ranunculus ficaria*);
20. coltsfoot (*Tussilago farfara*);
21. Japanese stilt grass (*Microstegium vimineum*);
22. tree of heaven (*Ailanthus altissima*); and
23. sycamore maple (*Acer pseudoplatanus*).

Among the 20 plants listed as invasive starting October 1, 2005 are:

1. purple loosestrife (*Lythrum salicaria*);
2. forget-me-not (*Myosotis scorpioides*);
3. Japanese honeysuckle (*Lonicera japonica*);
4. goutweed (*Aegopodium podagraria*);
5. parrotfeather (*Myriophyllum aquaticum*);
6. brittle water-nymph (*Najas minor*);
7. American water lotus (*Nelumbo lutea*);
8. yellow floating heart (*Nymphoides peltata*);
9. onerow yellowcress (*Rorippa microphylla*);
10. giant salvinia (*Salvinia molesta*); and
11. watercress (*Rorippa nasturtium-aquaticum*), except for watercress sold for human consumption without its reproductive structure.

BACKGROUND

Invasive Plants Council

PA 03-136 created a nine-member Invasive Plants Council to annually publish and periodically update a list of invasive and potentially invasive plants, and recommend ways to control and abate them.

PA 04-209—sSB 445
Environment Committee
Planning and Development Committee

AN ACT CONCERNING JURISDICTION OF MUNICIPAL INLAND WETLANDS COMMISSIONS

SUMMARY: This act defines wetlands to include aquatic plant and animal life and habitats in the wetlands. In doing so, it supersedes a state Supreme Court decision that the Inland Wetlands and Watercourses Act protects the physical characteristics of wetlands, but not wildlife or biodiversity.

By law, municipal inland wetland agencies can regulate certain activities that occur outside wetlands or watercourses if they might impact wetlands or watercourses. The act bars an agency from denying or making conditional an application to conduct a regulated activity outside wetlands or watercourses on the basis of its impact or effect on aquatic, plant, or

animal life or habitats in the wetlands or watercourses, unless the proposed activity will likely impact or affect (1) the physical characteristics of such life or habitat in the wetlands or watercourse or (2) the wetlands or watercourses themselves.

EFFECTIVE DATE: Upon passage

DEFINITIONS OF “WETLANDS OR WATERCOURSES” AND “HABITATS”

Under existing law, wetlands and watercourses are defined according to their physical characteristics. However, for the purpose of reviewing regulated activities in areas outside wetlands or watercourses, the act defines wetlands or watercourses to include aquatic, plant, or animal life and habitats in wetlands or watercourses. Under the act, habitat means an area or environment in which an organism or biological population normally lives or occurs.

FACTORS FOR CONSIDERATION

New definitions under the act require the environmental protection commissioner and local inland wetland agencies, when regulating, licensing, and enforcing activities under the Inland Wetlands and Watercourses Act, to take into account aquatic, plant or animal life and habitats in wetlands and watercourses when considering:

1. a proposed activity’s environmental impact on wetlands or watercourses;
2. the applicant’s purpose for the proposed activity, and any feasible and prudent alternatives that would cause less or no environmental impact to wetlands or watercourses;
3. the relationship between the short- and long-term impact of the proposed activity on wetlands or watercourses and the maintenance and enhancement of their long-term productivity;
4. irreversible and irretrievable loss of wetland or watercourse resources that the proposed activity would cause and any mitigation measures to (a) prevent or minimize pollution or other environmental damage; (b) maintain or enhance existing environmental quality; or (c) restore, enhance, and create productive wetland or watercourse resources;
5. impact of the proposed activity on wetland or watercourses outside the area where the activity is proposed; and
6. future activities associated with, or reasonably related to, the proposed activity that (a) the proposed activity makes inevitable and (b) may impact wetlands or watercourses.

BACKGROUND

Regulated Activities

By law, a regulated activity is any operation within or use of wetlands or watercourses involving removal or deposit of material, or any obstruction, construction, alteration, or pollution of wetlands or watercourses. The law exempts certain agricultural, residential, and other activities.

Related Court Case

In *Avalonbay Communities, Inc. v. Wilton Inland Wetlands Commission* (266 Conn. 150 (2003)), the developer, denied an inland wetlands permit by the town of Wilton, claimed that the Inland Wetlands and Watercourses Act (CGS § 22a-36 et seq.) protects wetlands from physical damage or intrusion, but not wildlife that might rely on the wetlands for a portion of its life cycle. The Supreme Court agreed. Noting that statutory definitions “are narrowly drawn and limited to physical characteristics,” the court ruled that the act “protects the physical characteristics of wetlands and watercourses and not the wildlife, including wetland obligate species, or biodiversity.” The court specifically noted that while the act requires the commission to consider “irreversible and irretrievable loss of wetland or watercourse resources,” it does not define “resources.”

PA 04-222—sSB 589

Environment Committee

Planning and Development Committee

Appropriations Committee

Finance, Revenue and Bonding Committee

Energy and Technology Committee

AN ACT CONCERNING THE PRESERVATION OF THE FAMILY FARM AND LONG ISLAND SOUND

SUMMARY: This act extends for a third year, until June 3, 2005, the moratorium on state agency considerations or final decisions on applications relating to electric power line, gas pipeline, or telecommunications crossings of Long Island Sound. The act allows applicants to submit a petition for a waiver of the moratorium to (1) the chairpersons and ranking members of the Energy and Technology and Environment committees, (2) the Connecticut Siting Council and Public Utilities Control Authority chairpersons, (3) the Department of Environmental Protection (DEP) commissioner, and (4) any other state agency with jurisdiction over the petition subject. It

allows these officials to grant the petition by unanimous consent.

The act requires the Department of Agriculture (DOAg) commissioner to impose an annual fee of 40 cents per linear foot on the owner of certain facilities that cross any grounds of the Sound within Connecticut's jurisdiction, including any shellfish area or leased, designated, or granted grounds. The fee applies to facilities that require either (1) a Connecticut Siting Council certificate or (2) Federal Energy Regulatory Commission (FERC) approval. The commissioner must (1) deposit 75% of the fee proceeds in the "expand and grow Connecticut agriculture" account, which the act establishes, and (2) transfer the remaining 25% to the DEP commissioner for deposit into the Environment Quality Fund.

The act requires any municipality or district that plans to take active agricultural land by eminent domain to purchase an easement on agricultural lands within its jurisdiction that meets certain size and soil quality criteria. If no such land is available, the municipality or district must pay for development rights to active agricultural land outside of its jurisdiction that is the same size and of equivalent or better soil quality than the land to be taken. The municipality or district must inform the agriculture commissioner which alternative it will take. The commissioner determines the amount the municipality or special district pays for the easement or purchase. The municipality or district cannot proceed with the taking until the commissioner approves of the easement purchase.

The act requires the agriculture commissioner to establish and administer programs that allow grocery stores, schools, and restaurants to be certified as using certain percentages of Connecticut-grown or produced farm products. It requires a grocery store to be certified in order to be eligible for loans and incentives from the Department of Economic Community Development (DECD).

The act requires the (1) Department of Administrative Services commissioner to give preference to dairy products, poultry, eggs, and fruits or vegetables grown in the state if they compare in cost to those grown outside the state when he contracts for or purchases such farm products and (2) DECD commissioner to consult with the agriculture commissioner regarding state housing policy, activities, programs, and plans and their impact on, and protection for, agricultural land.

The act also makes technical changes.

EFFECTIVE DATE: July 1, 2004, except for the moratorium extension and Connecticut Farm Fresh programs, which are effective upon passage.

TAKING ACTIVE AGRICULTURAL LAND BY EMINENT DOMAIN

This act requires towns, cities, boroughs, or districts that want to take active agricultural land by eminent domain to (1) buy an easement on the same amount of agricultural land (of comparable or better soil quality) in its jurisdiction, when available, or (2) pay the state a fee to purchase development rights to an equivalent amount of active agricultural land (of comparable or better soil quality) when none is available in its jurisdiction. In the latter case, the payments go into the General Fund and are credited to the state's farm preservation program. The municipality or special district must notify the DOAg commissioner of its intent to comply with either of these provisions. The DOAg commissioner must determine the amount the municipality or district pays for the easement or development rights and approve any purchase before the municipality or district can take the land.

A municipality cannot take any active agricultural land under the act unless the DOAg commissioner approves the easement purchase. Under the act, the easements are jointly and severally held by the municipality or district and the state.

CONNECTICUT FARM FRESH MARKET, RESTAURANT, AND SCHOOL PROGRAMS

Market

The act requires a grocery or food store to be certified as a "Connecticut Farm Fresh Market" by the agriculture commissioner in order to be eligible for any DECD financial assistance or other incentives. The agriculture commissioner may certify a grocery or food store if the commissioner is satisfied that the store continuously stocks 15% or more of its shelf space for retail produce and dairy with farm products grown or produced in Connecticut.

Under the act, qualifying products grown or produced in Connecticut include dairy products, meat, poultry, seafood, nuts, eggs, fruits, and vegetables. It defines "grocery or food store" as a business selling these types of products, as well as bakery products, and that has at least 10 employees.

A grocery or food store the commissioner certifies, as a "Connecticut Farm Fresh Market" may use that phrase for promotional and marketing activities.

Restaurants and Schools

The agriculture commissioner must also establish and administer programs, within available resources, to promote state restaurants and schools where at least 20% of the farm products served were grown or

produced in the state. The commissioner must, when he receives satisfactory proof that at least 20% of the farm products served were grown and produced in the state, certify the restaurant or school to use the phrases "Connecticut Farm Fresh Restaurant" or "Connecticut Farm Fresh School," respectively, for promotional and marketing activities. The act specifies that only a restaurant or school the commissioner certifies may use the phrases and that "school" includes any public or nonpublic school and higher education institution.

The act allows the commissioner to adopt regulations regarding the Connecticut Farm Fresh programs.

Expand and Grow Connecticut Agriculture Account

The act establishes this account, to be funded by 75% of the proceeds from an annual fee of 40 cents per linear foot on the portion of certain facilities that cross any part of the Long Island Sound within Connecticut's jurisdiction. The DOAg commissioner can use the funds for the Connecticut Farm Fresh programs.

BACKGROUND

Long Island Sound Moratorium

The moratorium, first enacted by PA 02-95, applies to any facility that requires either (1) a Connecticut Siting Council certificate or (2) FERC approval. By law, the moratorium does not apply to needed maintenance, repair, or replacement work on electric power lines, gas pipelines, or telecommunications crossings primarily serving customers located on islands or peninsulas off the Connecticut coast or harbors, embayments, tidal rivers, streams, or creeks. It also does not affect a project to replace existing electric cables in the Sound between Norwalk and Northport, New York.

Siting Council and FERC Approvals

By law, a Siting Council certificate is required to build or modify fuel pipelines, electric transmission lines, generating plants and substations, and certain other facilities.

FERC approves the location and construction of interstate gas pipelines and approves rates for the wholesale sale and transmission of electricity in interstate commerce.

PA 04-223—sHB 5241

Environment Committee

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING STATE SHELLFISHERIES, STANDARDS FOR SHELLFISH TESTING, LEASING OF SHELLFISH GROUNDS, SHELLFISHING VIOLATIONS, THE USE OF POWER DREDGES TO RESTORE SHELLFISH BEDS AND THE AGRICULTURAL TECHNOLOGY DEVELOPMENT ADVISORY BOARD

SUMMARY: This act:

1. enhances and expands penalties for illegally harvesting shellfish;
2. permits local shellfish commissions to allow the use of power dredges to cultivate, enhance, or restore natural shellfish beds in certain areas;
3. requires the Department of Agriculture (DOAg) to promulgate health standards for shellfish testing based on the U.S. Food and Drug Administration's National Shellfish Sanitation Program (NSSP) Model Ordinance rather than requiring the Department of Public Health (DPH) to recommend health standards for shellfish testing and authorize a private laboratory to conduct tests;
4. increases the minimum fee the state charges for leasing shellfish grounds from \$2 to \$4 per acre for both new leases and renewals and specifies that, when a lease ends, the lessee or holder must have met his obligations in order to receive preference in reletting the grounds);
5. allows the agriculture commissioner, when a lessee requests, to divide or consolidate the lessee's grounds, if doing so is in the state's best interest (the minimum \$4 fee applies to divided or consolidated shellfish grounds);
6. requires DOAg's Aquaculture Bureau director to study the effects of disease, pollution, siltation, and storm damage on oyster populations and report his findings to the Environment Committee by January 1, 2006; and
7. eliminates the Agriculture Technology Development Advisory Board.

The act also makes minor, technical, and conforming changes.

EFFECTIVE DATE: (1) July 1, 2004 for the increased penalties for violating shellfish laws and adoption of the NSSP model ordinance and corresponding conforming changes; (2) June 1, 2004 for shellfish bed fees, lease renewal and obligations, bed consolidation, and power

dredges; and (3) upon passage for the study and Agriculture Technology Development Advisory Board elimination.

SHELLFISHING VIOLATIONS

The act makes it illegal for a person, firm, or corporation to harvest shellfish from shellfish beds for which he or it is not licensed or which are undesignated. It (1) makes it illegal to harvest, as well as take, shellfish from certain areas closed by order or issuance of a license; (2) increases the penalty for violating various shellfish laws; and (3) specifically applies to recreational clam fishermen (people who take clams for personal or family consumption) certain laws already applicable to commercial shellfishermen.

By law, it is illegal to take shellfish from an area the DOAg has closed and posted against such taking. The act specifies that it is illegal to harvest, as well as take, shellfish from an area posted against the removal, rather than the taking, of shellfish. It exempts commercial shellfish harvesters who remove shellfish for transplanting and similar activities.

By law, it is also illegal to take shellfish from an area closed by the issuance of a transplant license. The act specifies that it is illegal to harvest, as well as take, shellfish from an area closed only by the issuance of a commercial shellfish transplant license. The department also issues town recreational transplant licenses.

The act eliminates a penalty for failing to surrender a shellfish license upon request, but it authorizes DOAg to revoke the license in certain cases.

Increased Penalties for Violating Commercial Shellfishing Laws

By law, any person, firm, or corporation that violates various shellfish laws can be fined between \$50 and \$1,000. Anyone that illegally takes shellfish worth more than \$1,000 may be fined between \$50 and three times their market value or sentenced to up to 12 months in prison. The act increases to \$1,000 the minimum fine for violating any of the shellfish laws listed below and extends the \$1,000 penalty to more situations. It authorizes the commissioner to revoke the license (1) of anyone who violates these laws for a second time, within six months of the first, for up to 60 days and (2) for up to 90 days for a third violation within nine months. The act specifies that these penalties are in addition to other penalties the law authorizes.

The increased penalties also apply to any person, firm, or corporation that:

1. harvests or takes shellfish, other than clams, in a closed area;
2. misuses any shipping tag or license;

3. mislabels shellfish shipments or deliveries with false information; and
4. fails to identify shellfish shipments or deliveries according to regulation.

It extends the penalties for any person, firm, or corporation that harvests shellfish from undesignated grounds or harvests shellfish from designated grounds not listed on the person's, firm's, or corporation's license.

Other Violations

The act increases, from \$50 to \$75, the minimum fine for taking clams for personal or family consumption from an area (1) DOAg has closed and posted against the taking of clams or (2) closed by the issuance of a license or local health department order.

The act subjects any person who defaces or removes a DOAg sign closing any coastal waters, shores, or tidal flats to shellfishing to a fine of up to \$500 or six months in prison.

LOCAL SHELLFISH COMMISSIONS AND POWER DREDGES

Under prior law, power dredges could not be used for taking shellfish from public shellfish beds (i.e., those under the auspices of the state and local shellfish commissions) and no unpowered dredge or other device could have a capacity of more than one and one half bushels.

The act allows a local shellfish commission to allow limited and supervised use of a power dredge or other contrivance with a capacity of no more than three bushels, to cultivate, enhance, or restore natural shellfish beds located within its jurisdiction. But the act prohibits the use of a power dredge or other contrivance to harvest or remove oysters. (Apparently the person dredging would replace the oysters to the bed if the power dredging harvested or removed them.) The commission must administer the dredging as required by law.

SHELLFISH HEALTH STANDARDS

This act removes the requirement that DPH recommend health standards for shellfish testing and authorize private laboratories to perform the testing. It instead requires DOAg to promulgate health standards for shellfish testing based on NSSP Model Ordinance. It specifies that DOAg (1) must enforce compliance with the NSSP Model Ordinance and (2) may adopt regulations, after consultation with DPH, for the sanitary growth, production, purification, and preparation of shellfish that incorporate by reference the provisions of the NSSP Model Ordinance.

BACKGROUND

NSSP Model Ordinance

The NSSP Model Ordinance establishes (1) minimum requirements for regulating the interstate commerce of molluscan shellfish and (2) a program to protect consumers' public health by assuring (a) the sale or distribution of shellfish from safe sources and (b) that shellfish have not been adulterated at any point. The Model Ordinance provides guidelines and is not a regulation.

Agriculture Technology Development Advisory Board

The Agriculture Technology Development Advisory Board advised the agriculture commissioner concerning agricultural technology and developed a state agricultural technology strategy.

The state agricultural technology strategy was responsible for:

1. identifying critical agricultural technologies for focused government support,
2. prioritizing the technologies based on trends in global and domestic agricultural problems and their potential for economic benefits, and
3. recommending effective public and private partnership arrangements for developing and disseminating agricultural technologies, among other things.

PA 04-231—sSB 218

Environment Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING CLEAN AND ALTERNATIVE FUEL VEHICLES

SUMMARY: This act exempts from the sales tax, until October 1, 2008, hybrid passenger cars that achieve a U.S. Environmental Protection Agency (EPA) estimated highway gasoline mileage rating of at least 40 miles per gallon. It extends until 2008 sales and other tax credits and exemptions encouraging the use and sale of, and investment in, alternative fuels and alternative fuel vehicles, facilities, and equipment.

It requires that the fleet average for each class of cars or light duty trucks the state buys have the best achievable mileage per pound of carbon dioxide (CO₂) emitted.

EFFECTIVE DATE: July 1, 2004, except for the provisions affecting the state motor vehicle fleet and the sales tax exemption for hybrid passenger cars, which take effect October 1, 2004. The provision for business

tax credits is applicable to income years beginning January 1, 2004.

SALES TAX EXEMPTION

From October 1, 2004 to October 1, 2008, the act exempts the sale of any hybrid passenger car with an EPA gas mileage rating of at least 40 miles per gallon from the sales tax. Hybrid vehicles use two sources of power, such as gasoline and electric power.

It extends for an additional four years, from July 1, 2004 to July 1, 2008, the sales tax exemption for the sale, storage, use, or other consumption of (1) new motor vehicles exclusively powered by a clean alternative fuel; (2) conversion equipment incorporated into or used in converting motor vehicles to either (a) use a clean alternative fuel exclusively or (b) use both a clean alternative fuel and any other fuel; and (3) equipment incorporated into or used in a compressed natural gas, hydrogen filling, or electric recharging station for vehicles powered by a clean alternative fuel. For purposes of the sales tax exemption, a clean alternative fuel is natural gas, hydrogen, electricity, or propane when used as a motor vehicle fuel.

PETROLEUM PRODUCTS GROSS EARNINGS TAX

Subject to certain exemptions, the law requires petroleum refiners or distributors to pay a quarterly tax on their gross earnings from the first sale of petroleum products in the state. The act extends for four years, from July 1, 2004 until July 1, 2008, exemptions from the tax for the first sale of (1) propane gas for use as a motor vehicle fuel and (2) petroleum products for use as fuel for a fuel cell.

UTILITY COMPANY TAX

The act extends, for an additional four years, the expiration date of an exemption from the utility gross earnings tax for certain gas companies' income from the sale of natural gas or propane as a motor vehicle fuel. Under the act, the exemption applies to such income earned in taxable quarters starting before June 30, 2008, instead of June 30, 2004.

BUSINESS TAX CREDITS

The act extends certain business tax credits for the purchase of alternative fuel vehicles and investments in alternative fuel facilities and equipment through income years or calendar quarters beginning before January 1, 2008. These credits would have otherwise expired on January 1, 2004. The credits apply to corporation business, air carrier, railroad, cable TV, and utility company taxes, and are for (1) the incremental cost of

buying a vehicle exclusively powered by a clean alternative fuel, (2) construction of a new filling station or improvements to an existing filling station to provide compressed natural gas, liquefied petroleum gas, or liquefied natural gas; (3) purchase and installation of conversion equipment incorporated into or used in converting vehicles powered by any other fuel to either exclusive use of clean alternative fuel or dual use of the other fuel and a clean alternative fuel; or (4) purchase and installation of equipment incorporated into or used in a compressed natural gas, liquefied petroleum gas, or liquefied natural gas filling or electric recharging station for vehicles powered by a clean alternative fuel. For purposes of the business tax credit, a clean alternative fuel is compressed natural gas, liquefied petroleum gas, liquefied natural gas, or electricity when used as a motor vehicle fuel.

MOTOR VEHICLE FUELS TAX

The act extends a motor vehicle fuels tax exemption for compressed natural gas, liquefied petroleum gas, and liquefied natural gas from July 1, 2004 to July 1, 2008.

CARBON DIOXIDE REQUIREMENT

By law, on average, the cars or light duty trucks the state buys must (1) have an EPA estimated highway gasoline mileage rating of at least 40 miles per gallon, and (2) comply with federal regulations concerning the percentage of alternative-fueled vehicles in the state motor vehicle fleet. The act requires that the fleet average for cars and light duty trucks also have the best achievable mileage per pound of CO₂ emitted in its class.

Prior law exempted from the first two requirements cars or light duty trucks that the state bought and intended for conversion to natural gas or electric-powered vehicles. The act repeals this exemption, subjecting these vehicles to the new CO₂ requirement as well as the existing requirements concerning highway mileage and percentage of alternative fuel vehicles.

PA 04-244—sSB 543

Environment Committee

Commerce Committee

AN ACT CONCERNING THE COMMERCIAL UNDERGROUND STORAGE TANK ACCOUNT

SUMMARY: Prior law prohibited the Underground Storage Tank Petroleum Clean-Up Account Review Board or Department of Environmental Protection (DEP) commissioner from accepting applications for

reimbursement and payment from the commercial underground storage tank account until October 1, 2005. The act allows them to resume accepting applications from May 19, 2004 through June 30, 2005. Under the act, the ban resumes July 1, 2005 and continues, as under prior law, until October 1, 2005.

The act bars the board, starting June 1, 2004, from making any payment or reimbursement from the account for any costs, expenses, or other obligations paid or incurred for remediation, including monitoring, if the remediation is to a level more stringent than that set by regulation, unless the applicant can show DEP ordered the remediation. This prohibition applies regardless of (1) other laws or regulations concerning payment or reimbursement under the program and (2) when an application is submitted. The act makes an applicant's compliance with this requirement one of several criteria the board must consider in deciding whether to order payment or reimbursement to a responsible party.

Under the act, the board cannot order payment from the account for work or services performed or material provided before October 1, 2004 unless it receives the application or preauthorization request by April 1, 2005. It cannot order payment for work or services performed, or material provided, after October 1, 2004 unless it receives the application or preauthorization request within 180 days of the date the work or services were rendered or performed, or the material was provided.

Work or services are considered rendered or performed on the date the work is rendered or performed, and material is considered provided on the date it is made available for use.

EFFECTIVE DATE: Upon passage

BACKGROUND

Commercial Underground Storage Tank Program Clean-Up Account

The Underground Storage Tank Petroleum Clean-Up Account reimburses responsible parties for remediation costs they incur because of leaking commercial tanks, primarily those containing motor fuel, such as diesel fuel and gasoline. PA 03-6 prohibited the review board and commissioner from accepting applications for reimbursement from the account between September 1, 2003 and October 1, 2005.

PA 04-252—sSB 595*Environment Committee**Transportation Committee**Government Administration and Elections Committee**Legislative Management Committee**Energy and Technology Committee***AN ACT CONCERNING CLIMATE CHANGE**

SUMMARY: This act requires (1) the state to take steps to reduce greenhouse gas emissions as part of a regional effort to reduce such emissions and (2) the Governor's Steering Committee on Climate Change to develop plans to help achieve the reduction goals. It requires the Department of Environmental Protection (DEP) commissioner to (1) report annually on progress in achieving the goals and (2) work to establish a regional greenhouse gas registry and regional reporting system with other states or a regional consortium. The act requires certain electric generators and commercial and industrial sites annually to report their greenhouse gas emissions to the registry. The commissioner must also annually consider requiring (1) additional facilities or sectors to report to the regional greenhouse gas registry and (2) the reporting of additional greenhouse gases, and direct and indirect emissions.

The commissioner must also:

1. provide for the voluntary reporting of greenhouse gas emissions by entities not required to report,
2. evaluate the feasibility of creating and administering a statewide registry if a regional registry is not developed and implemented, and
3. publish a greenhouse gas emissions inventory every three years.

The act authorizes the commissioner to adopt regulations to implement the greenhouse gas registry and reporting provisions, and gives him broad authority to adopt regulations to implement the act.

The act requires the Department of Administrative Services (DAS) to develop and maintain information about environmentally preferable practices, in addition to environmentally preferable products and services the law already requires, including those practices, products, and services that minimize the impact of global warming. But it limits those practices, products, and services to those DAS procures.

EFFECTIVE DATE: October 1, 2004

GREENHOUSE GASES

Under the act, a greenhouse gas is any chemical or physical substance emitted into the air that the DEP commissioner may reasonably expect to cause, or contribute to, climate change. These include carbon

dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

EMISSION REDUCTION GOALS

The act sets a goal of reducing greenhouse gas emissions to help achieve the regional goal of reducing such emissions to (1) 1990 levels by January 1, 2010 and (2) 10% below 1990 levels by January 1, 2020. The act requires the DEP commissioner to consult with the Conference of New England Governors and Eastern Canadian Premiers to set a long-term deadline for the regional goal of reducing greenhouse gas emissions by 75% to 85% below 2001 levels. If the conference does not set this deadline by January 1, 2007, the commissioner must set 2050 as the long-term deadline.

Climate Change Action Plans

The act requires the Governor's Steering Committee on Climate Change to develop, by January 1, 2005, a multi-sector, comprehensive climate change action plan that includes policies and programs needed to reach the state's 2010 and 2020 emissions goals. The steering committee must (1) provide the public with the opportunity to comment on the plan; (2) notify each member of the General Assembly of its development and the opportunity for public comment; and (3) submit it by January 1, 2005 to the Environment, Energy and Technology, Transportation, and Commerce committees, which must review it by January 15, 2005 at a joint informational public hearing, and meet by February 1, 2005 to consider endorsing it. The steering committee must submit a final plan to the committees by February 15, 2005. The act does not require the committees to approve the final plan.

The steering committee must, by January 1, 2008, develop and submit to the Environment Committee an amended climate change plan for achieving the state's contribution towards achieving the long-term regional goal. The steering committee must have provided the public an opportunity to comment on this plan.

Progress Report

The DEP commissioner, in collaboration with other state agency commissioners and the steering committee, must report to the Environment Committee by December 1, 2005, and annually thereafter, on (1) progress made in achieving the short- and long-term emission reduction goals and (2) the appropriateness of the climate change action plans in achieving those goals.

GREENHOUSE GAS REGISTRY

The DEP commissioner must work with other states or a regional consortium to establish a regional greenhouse gas registry for greenhouse gas emissions and a regional reporting system.

By April 15, 2006, and annually thereafter, owners or operators of any facility (1) with stationary emission sources that emit greenhouse gases and (2) required by Title V of the federal Clean Air Act to report air emissions data to DEP must report the facility's direct stack greenhouse gas emissions to the regional registry. The report must be in a type and format the registry can accommodate.

If a regional registry is not developed and implemented by April 15, 2007, the commissioner must evaluate the feasibility of creating and administering a statewide registry. But reporting entities must send their data to a regional registry if one is created. It is not clear to whom entities must report between April 15, 2006 and April 15, 2007 if a regional registry is not then in place.

By July 1, 2006, the commissioner must provide for the reporting of greenhouse gas emissions to the regional registry by entities and facilities that the act does not require to report, but which do so voluntarily. The reports must be in a type and format the registry can accommodate. Entities that report voluntarily apparently need not report to a statewide registry, if one is established.

The commissioner must annually consider expanding the regional greenhouse gas registry to require the reporting by, or of, other (1) facilities or sectors, (2) greenhouse gases, and (3) direct and indirect emissions. He must include the reasons for his decisions on whether to expand the registry in his annual progress reports to the Environment Committee. Under the act, direct emissions are emissions from factory stacks, manufacturing processes and vents, and company-owned or leased motor vehicles. Indirect emissions are those associated with the consumption of purchased electricity, steam, and heating or cooling by buildings, structures, or installations located on an entity's property.

By July 1, 2006, and every three years afterwards, the commissioner must publish a state greenhouse gas emissions inventory, including comprehensive estimates of the amount of greenhouse gas emitted in the state for the last three years for which he has data.

ENVIRONMENTALLY PREFERABLE PRACTICES

Under existing law, DAS must establish procedures to promote the procurement and use of environmentally preferable products and services that have a lesser or reduced negative effect on human health and the

environment when compared to competing products. The act requires it to promote environmentally preferable practices as well.

It requires DAS, by January 1, 2005, and annually thereafter, to develop and maintain information about environmentally preferable practices, in addition to environmentally preferable products and services the law already requires, including products, services, and practices that minimize the impact of global warming. But it limits those practices, products, and services to those DAS procures. The act eliminates a provision limiting the department to do so within available appropriations. DAS must monitor the use of environmentally preferable practices, in addition to services and products the law requires, and designate those products, services, or practices that cost the same or less than other, similar products, services, or practices.

BACKGROUND

Global Warming

Many scientists believe global warming is caused when carbon dioxide and other greenhouse gases, produced in large part by the burning of fossil fuels, trap heat in the atmosphere. They believe this will cause a wide range of harmful effects, including hotter summers, more frequent droughts, the melting of polar ice caps and subsequent rise in sea level, impaired air quality, and higher rates of respiratory disease.

Climate Change Action Plan

The Conference of New England Governors and Eastern Canadian Premiers, representing the six New England states and the provinces of New Brunswick, Newfoundland, Labrador, Nova Scotia, and Prince Edward Island, issued a Climate Change Action Plan in 2001 that recommended short- and long-term goals to reduce greenhouse gas emissions. The governor subsequently appointed a steering committee to organize a discussion among businesses, nonprofit organizations, state and local government agencies, and academic institutions of ways to reduce greenhouse gas emissions. It issued its report in January 2004.

Reporting Entities

DEP issues Title V operating permits to power plants and other major sources of air pollution subject to the federal Clean Air Act. Permittees must ensure compliance with pollution control requirements. According to DEP, about 126 facilities report to it under Title V.

PA 04-3—sSB 30

Finance, Revenue and Bonding Committee

AN ACT CONCERNING AN AUTHORIZATION OF BONDS OF THE STATE FOR HIGHER EDUCATION CAPITAL IMPROVEMENTS AND OTHER PURPOSES

SUMMARY: This act exempts the economic recovery notes authorized in 2003 from the state's statutory debt limit. The legislature authorized the five-year notes to fund (1) the FY 2003 General Fund deficit and (2) the estimated costs of repaying remaining medical bills for State Administered General Assistance and General Assistance recipients incurred before the 2003 legislative changes in medical assistance for such recipients took effect.

For FY 2004, the act authorizes up to \$2.5 million in state general obligation bonds for asbestos abatement projects in state buildings and up to \$136,462,390 for nine capital projects at the community-technical colleges and 17 at Connecticut State University. For FY 2005, it authorizes bonding for two Eastern Connecticut State University projects: (1) up to \$55,874,000 for a new science building and (2) up to \$915,000 for facility renovations, alterations, and improvements. It applies standard statutory term, issuance, and approval procedures and requirements to all its authorized bonds and their proceeds.

Finally, the act redirects three prior bond authorizations for Gateway Community-Technical College to implementation of a master plan to consolidate the college's two campuses.

EFFECTIVE DATE: Upon passage, except for Eastern's science building and facility renovation, alteration, and improvement bond authorizations, which take effect July 1, 2004.

BACKGROUND

Statutory Debt Limit

With some exceptions, the state's total debt payable from General Fund revenue cannot exceed 1.6 times the total General Fund revenue for the fiscal year in which the debt authorization is effective or the debt is issued. The debt limit must be calculated using the General Fund revenue estimates for each fiscal year. By law, the Finance, Revenue and Bonding Committee adopts the estimates, which must be included in the state budget.

PA 04-4—SB 34

Finance, Revenue and Bonding Committee

AN ACT AUTHORIZING BONDS OF THE STATE FOR CAPITAL RESURFACING AND RELATED RECONSTRUCTION PROJECTS AND AMENDING PROVISIONS RELATED TO FUNDING FOR TRANSPORTATION STRATEGY PROJECTS

SUMMARY: This act:

1. increases fees for an original driver's license and the optional two-year license available to someone age 65 or over;
2. eliminates a special renewal license, and its associated fee, issued when a driver's birthday changes after an original license is issued; and
3. includes the additional revenue from the increased fees in the "incremental revenue" used to fund Transportation Strategy Board projects and programs.

(PA 04-199 amended this act to increase the original and two-year license fees by an additional dollar, effective July 1, 2004.)

The act also authorizes \$49 million in special tax obligation bonds for Department of Transportation capital road resurfacing and related reconstruction projects. It applies standard issuance and approval procedures and requirements to the bonds and their proceeds.

EFFECTIVE DATE: Upon passage for the fee provisions and incremental revenues; May 1, 2004 for the bond authorization.

LICENSE FEES

Original License

The act changes the fee for an original license from \$1 per month up to a maximum of \$4 for any six-month period, plus \$5.25 to \$43 for a four-year license, \$65 for a six-year license, and \$11 per year for any part of a year. (PA 04-199 increases the fees for four- and six-year licenses to \$44 and \$66, respectively, as of July 1, 2004.) Original licenses are frequently issued for irregular periods to correlate the license expiration with the applicant's birthday.

Two-Year License

The law allows a driver age 65 or older to renew his license for two years instead of six. The act increases the fee for this two-year license from \$19 to \$21. (PA 04-199 increases the fee to \$22, effective July 1, 2004.)

Renewal License Issued When Operator's Birthday Changes

The act eliminates special renewal license requirements when the Department of Motor Vehicles (DMV) changes its records in a way that affects an operator's birthday after it issues or renews his driver's license. Prior law required that, in such a situation, the original or renewal license's expiration date remain the same and that, after that date, the driver receive a renewal license that corresponded to his corrected record of birth. The renewal license term had to be between 24 and 72 months, depending on the driver's birth year. The fee for the renewal license, which the act also eliminates, was \$0.45 per month starting from the last day of the month in which it expired but not more than \$2.50 for any six-month period, plus \$1.

By eliminating the special renewal and fee, the act puts all license renewals for those under age 65 on the regular four- or six-year schedule and charges the same fees for all renewals.

BACKGROUND

Related Acts

PA 04-182 increases various DMV fees and also assigns the "incremental revenue" to fund projects and programs the legislature has identified as priorities for implementing the Connecticut Transportation Strategy Board's transportation strategy.

PA 04-149 makes similar changes in the designation of incremental revenue.

PA 04-199 increases the original drivers' and two-year license fees by an additional dollar above the amounts specified in this act.

PA 04-40—SB 600

Finance, Revenue and Bonding Committee

AN ACT CONCERNING PORTABILITY OF CERTAIN VETERANS' PROPERTY TAX BENEFITS

SUMMARY: This act allows active duty service members and veterans or members of their immediate families to keep receiving certain veterans' property tax exemptions when they move to a different town during the assessment year. It does this by requiring tax assessors to give each person receiving one of these exemptions a certificate attesting to their eligibility for the exemption for that assessment year.

Under the act, a person moving to another town can establish his claim for the exemption in that town by giving its assessor a copy of the certificate. The act

requires that assessor to give the exemption if the person would otherwise qualify for it based on statutory criteria. The eligibility criteria for the exemptions subject to the act's certificate requirement are set in statute and apply uniformly across towns.

Existing law, which this act does not change, provides a procedure that a veteran who moves to another town may use to establish his claim for the veteran's exemption in that town. The veteran can ask the clerk of his former town to send his honorable discharge certificate or a certified copy of it to the clerk of his new town. Or, he may establish his claim in the new town by showing the clerk the certificate or a copy of it.

EFFECTIVE DATE: October 1, 2004 and applicable to assessment years beginning on or after that date.

VETERANS' PROPERTY TAX EXEMPTIONS

The act makes certificate holders eligible for the veterans' property tax exemptions described in Table 1 when they move to another town if they meet statutory eligibility criteria.

Table 1: Veterans' Property Tax Exemptions

<i>Exemption</i>	<i>Citation</i>
Basic Veteran's Exemption	CGS § 12-81(19)
Veterans With Disabilities	CGS § 12-81(20)
Surviving Spouse or Minor Child of Service Member or Veteran	CGS § 12-81(22)
Surviving Spouse Receiving Federal Benefits	CGS § 12-81(23)
Surviving Spouse or Minor Child Receiving Veterans' Administration Compensation	CGS § 12-81(24)
Surviving Parent of Deceased Service Member or Veteran	CGS § 12-81(25)
Surviving Parent of Deceased Veteran Receiving U.S. Pension, Annuity, or Compensation	CGS § 12-81(26)
Property of U.S. Army Instructors	CGS § 12-81(28)
Active Duty Service Member's Motor Vehicle Garaged in Another State	CGS § 12-81(53)

The act's provisions do not apply to the state mandated and local option additional exemptions (CGS § 12-81g and 12-81f, respectively). Nor do they apply to the following exemptions for veterans with disabilities:

1. mandatory \$10,000 exemption for veterans with severe disabilities (CGS § 12-81 (21) (A)),
2. local option 100% exemption for specially adapted housing (CGS § 12-81(21) (C)), and
3. local option exemption for specially adapted motor vehicles (CGS § 12-81(h)).

PA 04-72—HB 5479*Finance, Revenue and Bonding Committee***AN ACT CLARIFYING PROVISIONS RELATED TO THE PROPERTY TAX EXEMPTION FOR MANUFACTURING MACHINERY AND EQUIPMENT**

SUMMARY: By law, businesses qualify for a five-year, 100% property tax exemption on new and newly acquired manufacturing machinery and equipment that meets the Internal Revenue Code's definition of five- or seven-year property classifications for determining depreciation for federal tax purposes. The state reimburses towns for 80% of the tax revenue they forgo because of this exemption.

This act specifies that a business must have claimed the property as five- or seven-year property on its federal tax return in order to qualify for the exemption. The business must provide a copy of the return and the accompanying schedules to the Office of Policy and Management (OPM) secretary if he requests them. Alternatively, it may submit only the schedules, if the secretary approves. It must also submit a sworn affidavit with them stating that they were filed as part of the return.

By law, the business must prepare a list of the machinery and equipment for which it claims the exemption and submit it to the assessor by November 1 annually. The act specifies that this requirement does not supersede the list of personal property the business must file annually with the assessor but does supersede the lists that must be filed annually by corporations and people who do not reside in a town but own personal property there.

EFFECTIVE DATE: Upon passage

PA 04-126—sHB 5477*Finance, Revenue and Bonding Committee
Planning and Development Committee***AN ACT CONCERNING ENFORCEMENT OF MOTOR VEHICLE PROPERTY TAX DELINQUENCIES**

SUMMARY: This act changes the way towns help pay for the Department of Motor Vehicles (DMV) delinquent motor vehicle property tax enforcement program, which bars those whose taxes are delinquent from registering their vehicles.

The act eliminates a requirement that towns pay a 50-cent fee for each motor vehicle or snowmobile they report to DMV for delinquent taxes and instead requires them to pay annual fees based on population. It requires the Office of Policy and Management secretary to set the fees by multiplying the program's annual cost by each town's share of the state's population, using the most recent Department of Public Health population estimates.

Under the act, the DMV commissioner must certify the program's cost to the secretary by July 15 annually, the secretary must notify each town of its fee amount by August 1, and towns must pay by September 1. As was the case with the former 50-cent fee, payments must go to the General Fund. If a town fails to pay, DMV is not required to deny motor vehicle registrations to people who owe property taxes to that town or to any borough or special taxing district in it.

The act also eliminates the authority for a town, by a vote of its legislative body, to charge a \$5 fee to anyone whose motor vehicle property taxes are delinquent, if the town notified DMV of the delinquency.

EFFECTIVE DATE: July 1, 2004

PA 04-149—HB 5480*Finance, Revenue and Bonding Committee***AN ACT CONCERNING FUNDING OF TRANSPORTATION STRATEGY PROJECTS**

SUMMARY: This act makes several minor and technical changes in the law governing financing for Transportation Strategy Board (TSB) projects. It:

1. allows TSB projects to be funded from other available TSB funds to the extent money is not available from either the Special Transportation Fund (STF) or the Infrastructure Improvement Fund, rather than just the latter;
2. permits the incremental revenues assigned to the TSB project account to be used to pay debt service on, and issuance expenses for, special tax obligation (STO) bonds to finance TSB projects, as well as to pay cash for such projects;
3. makes payment of the incremental revenues for cash funding the second allocation priority for STF funds after STO bond debt service and before general obligation bond debt service and agency expenses;

4. requires the STO bond proceeds applied to fund TSB projects to be held in a subaccount of the Infrastructure Improvement Fund; and
5. places the TSB projects account within the STF rather than the Infrastructure Improvement Fund.

The act also conforms the law to practice by specifying that, though the second and subsequent annual TSB project financing plans are due by August 1, the first such plan was due by December 1, 2003. By law, the Department of Transportation, in consultation with the Office of Policy and Management secretary, the state treasurer, and the TSB, must prepare a financing plan for annual funding of TSB projects and purposes.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Act

PA 04-143 duplicates the provisions of this act that (1) allow TSB projects to be funded from other available TSB funds if money is not available from either the STF or the Infrastructure Improvement Fund, rather than just the latter; (2) make payment of incremental revenues the second priority for STF funds after STO bond debt service; and (3) place the TSB project account within the STF instead of the Infrastructure Improvement Account.

PA 04-154—HB 5646

Finance, Revenue and Bonding Committee

AN ACT CONCERNING REAL ESTATE CONVEYANCE TAX TREATMENT OF EMPLOYEE RELOCATIONS

SUMMARY: With some exceptions, a property seller must pay a real estate conveyance tax when he conveys the property deed to the buyer. This act exempts employer and relocation company resales of residential property acquired through employee relocation plans from the tax. To be exempt, the resale must occur within six months after the date the relocated employee conveyed the property to his employer or the relocation company. The relocation company exemption applies to entities in the business of buying and selling employees' homes under employee relocation plans.

EFFECTIVE DATE: July 1, 2004 and applicable to conveyances on or after that date.

PA 04-156—sSB 602

*Finance, Revenue and Bonding Committee
Commerce Committee*

AN ACT CONCERNING WATER COMPANY PROPERTY ACQUIRED BY A MUNICIPALITY FOR CONSTRUCTION OF A SCHOOL

SUMMARY: This act requires that land a municipality with a 2000 population of between 11,600 and 11,900 (i.e., Plymouth) acquires from a private water company in order to build a school be treated as though it were open space for certain purposes.

Specifically, it makes the water company involved eligible for an existing open space land donation tax credit against its corporation tax. The credit is 50% of the land's fair market value at its highest and best use, if the land is transferred without charge, or 50% of any discount on the sale price. The act also entitles the company's shareholders to up to 100% of the benefits of the sale. Ordinarily, if water company land is sold for purposes other than recreation or open space, the law requires the Department of Public Utility Control (DPUC) to equitably allocate the sale proceeds between shareholders and ratepayers.

Finally, the act states that the land must be treated as open space with regard to "the right to acquire" such land. Another law restricts (1) a water company's ability to sell its class I and class II (generally watershed) lands and (2) the ability of the company and the land's subsequent owners to change the land's use (CGS § 25-32). Since the act does not explicitly supersede this law, it appears that these restrictions on changes in use would still apply to the specific situation the act addresses.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Acts

PA 04-200 modifies how the DPUC allocates the benefits of sales of land owned by water companies, expands the credit against the corporation tax for donations of open space land, and establishes a parallel credit for donations of land for educational uses.

PA 04-2, May Special Session, establishes two sets of criteria by which the public health commissioner must determine whether a water supply source may be abandoned. The criteria are based on the volume of dependable water that the source can supply during a critical dry period without considering available water limitations.

PA 04-201—sSB 421*Finance, Revenue and Bonding Committee***AN ACT CONCERNING ADMINISTRATION OF VARIOUS STATE TAXES**

SUMMARY: This act makes various changes in state tax laws. It extends the Department of Revenue Services (DRS) commissioner's power to establish reciprocal tax collection agreements with other states. It expands the commissioner's authority and investigative power in certain areas and eliminates her authority in others. It changes various tax and information filing requirements, including establishing a separate Connecticut income tax withholding payment schedule. It clarifies how to calculate the real estate conveyance tax due on a residence sold for more than \$800,000, eliminates an oyster-harvesting license and tax, and retroactively exempts certain items sold on the premises of a for-profit hospital from the state sales and use tax.

EFFECTIVE DATE: Various, see below.

RECIPROCAL TAX COLLECTION AGREEMENTS WITH OTHER STATES (§1)*Authority*

The act allows the DRS commissioner to use her statutory authority to collect another state's taxes in Connecticut and pay amounts collected to the other state, as long as the other state's law provides reciprocal authority for its taxing authorities to collect and remit Connecticut taxes in that state. It allows her to use all the powers she has to collect Connecticut taxes, including issuing tax warrants and placing liens on the taxpayer's property in Connecticut. Under prior law, the commissioner could already collect taxes due another state by withholding the amount owed to the other state from a taxpayer's Connecticut tax refund, and other states could sue in Connecticut courts to collect their taxes as long as they allow Connecticut to do the same in their courts.

Under the act, the commissioner may make agreements with other states' taxing authorities concerning (1) the other state's methods and procedures for collecting Connecticut taxes, (2) safeguards against disclosure or inappropriate use of information that directly or indirectly identifies a particular taxpayer, and (3) a minimum threshold for amount of taxes owed to the other state before collection procedures in Connecticut are triggered. Similar provisions apply to the commissioner's existing power to withhold taxes due another state from a Connecticut tax refund.

Collectible Amounts

Collectible amounts are taxes imposed by the other state, plus any additions, interest, and penalties, considered legally enforceable under the other state's law after all administrative and judicial remedies in that state have been exhausted or have expired. These amounts are collectible under the act, regardless of whether there is any outstanding judgment for the sum.

Other State's Certification

Before the DRS commissioner may collect another state's taxes in Connecticut, the other state's tax officer must request action and certify to the commissioner:

1. the taxpayer's full name, address, and Social Security or federal employer identification number;
2. the amount to be collected, including a detailed statement for each tax period that shows the tax, interest, and penalty;
3. whether the taxpayer filed a return with the other state and, if he did, whether he did so under protest; and
4. that applicable administrative and judicial remedies have been exhausted or have expired and the tax amount is legally enforceable against the taxpayer under the other state's laws.

Notice to Taxpayer

When the commissioner receives a certification from another state, she must notify the taxpayer of the other state's claim by first-class mail at the taxpayer's last-known address. The notice must inform him of his right to protest DRS' collection of the other state's claim; that failure to protest waives any demand against Connecticut on account of the collection; and that, upon collection, the amount collected will be paid to the other state. The notice must include a copy of the other state's certification. The notice becomes final 60 days after the mailing date except for any amount for which the taxpayer has filed a written protest.

Procedures for Protesting Collection

Under the act, a taxpayer notified that another state is seeking to have DRS collect taxes he owes it has 60 days after the notice is mailed to protest collection of all or part of the amount. The taxpayer must file the protest with the DRS commissioner in writing and state the grounds for the protest. When she receives the protest, the commissioner must not collect the protested amount and must send a copy of the protest to the claimant state.

for its determination of the merits of the protest under its own laws.

Other State's Certification Regarding Protested Collections

The act allows the commissioner to collect protested taxes only if (1) the other state, within 45 days after she sends the protest, certifies that it has reviewed the grounds for the protest and renews its initial collection certification and (2) she is satisfied that the other state's certifications are true, accurate, and complete.

In cases where (1) the taxpayer failed to file a return for the tax period for which the other state seeks collection, (2) the tax owed is based on an assessment against him by the other state's tax officer, and (3) the taxpayer has filed a timely protest against collection with DRS, the other state must also certify that the assessment was contested before, and decided by, that state's appropriate administrative body or court. If the commissioner believes the taxpayer's protest is based on a bona fide contention that the other state has no jurisdiction to tax him, the other state must certify that the tax assessment was contested before, and decided by, the appropriate court in that state.

EFFECTIVE DATE: July 1, 2004

MOTOR VEHICLE FUEL AND MOTOR CARRIER ROAD TAX INVESTIGATIONS (§§ 2 & 3)

The act expands the DRS commissioner's powers to conduct investigations to enforce the motor vehicle fuel and motor carrier road tax laws. It allows her or her representative to put people under oath, subpoena witnesses, and order people to produce documents in connection with any hearing conducted under those tax laws.

Under the act, those subject to the subpoenas or orders may not refuse to testify or produce the required documents on the grounds of self-incrimination, if the testimony or documents are not to be used in a criminal proceeding against them. If anyone disobeys a subpoena to appear, or appears but refuses to testify or produce required documents, the act allows the commissioner to ask the Superior Court to enforce the order. If the person refuses to respond to the court's order to appear or produce testimony or documents, the act requires the court to send the person to jail either until he complies or for 60 days, whichever occurs first. Meanwhile, the act allows the commissioner to continue her investigation and examination as if the witness had not been called to testify.

EFFECTIVE DATE: Upon passage

REAL ESTATE CONVEYANCE TAX ON RESIDENCES SOLD FOR OVER \$800,000 (§ 4)

By law, the state real estate conveyance tax rate on the sale of a home is 0.5% on the first \$800,000 of the sale price and 1% on any part of the price above that amount. The act requires the tax to be calculated based on the home's aggregate sale price, regardless of how many deeds or other documents the seller uses to convey it to the buyer.

EFFECTIVE DATE: Upon passage

CONNECTICUT SCHEDULE FOR INCOME TAX WITHHOLDING PAYMENTS (§ 5)

Schedule, Liability, and Look-Back Periods

The act establishes a payment schedule separate from the federal one for employers and payers required to withhold Connecticut income tax from wages and nonpayroll amounts, respectively. It establishes weekly, monthly, and quarterly withholding payment requirements. An employer's payment schedule for each calendar year starting on or after January 1, 2005 depends on his withholding tax liability for the 12 months ending the preceding June 30. (This is the same as the federal employer look-back period.) The schedule for other payers depends on their total liability for the calendar year two years before their payment schedule determination. Payment schedules must be adjusted annually. The act establishes special provisions for seasonal and household employers.

The act requires an employer or other payer to remit withholding taxes weekly if its liability in the look-back period was more than \$10,000; monthly if its liability was more than \$2,000 but no more than \$10,000; and quarterly if its liability was \$2,000 or less. Household employers must pay annually, regardless of their liability.

Nonpayroll Amounts

The act applies to the following nonpayroll amounts:

1. gambling winnings paid to Connecticut residents that are subject to federal income tax withholding (i.e., payments over \$5,000);
2. Connecticut lottery winnings that must be reported to the IRS, regardless of whether they are subject to federal withholding (i.e., payments of \$600 or over and at least 300 times the wager amount);
3. pension and annuity distributions and military retirement paid to Connecticut residents requesting state income tax withholding;

4. unemployment compensation paid to those requesting state income tax withholding; and
5. nonwage payments to athletes or entertainers from which the DRS commissioner requires withholding (generally, fees over \$1,000 unless DRS grants a waiver).

Household and Seasonal Employers

Under the act, a “household employer” is someone who employs a person, such as a housekeeper, maid, babysitter, or gardener, to provide domestic services in or around his private home. A “seasonal employer” is an employer who, on a regular basis and during the same quarters each year, pays no wages. In determining a seasonal employer’s withholding tax remittance schedule, the act requires the commissioner to prorate his liability based on the number of quarters during his 12-month look-back period during which he paid wages to employees.

Tax Remittance Deadlines

Table 1 shows the deadlines by which the act requires employers and other payers to pay withholding taxes to DRS. Each deadline refers to a date after the period during which payees received wages or other payments from which the remitted taxes were deducted.

Table 1: Payment Deadlines

<i>Liability</i>	<i>Schedule</i>	<i>Deadline</i>
\$2,000 or less	Quarterly	Last day of the month following the end of the payment quarter
\$2,001 to \$10,000	Monthly	15 th of the month after the payment month
More than \$10,000	Weekly	Wednesday after the payment week

A household employer’s withholding tax payment deadline, regardless of liability, is the April 15th following the year during which the wages were paid. EFFECTIVE DATE: January 1, 2005 and applicable to wages and nonpayroll amounts paid on or after that date.

PENALTY FOR ESTIMATED INCOME TAX UNDERPAYMENT OR FAILURE TO FILE A RETURN (§ 6)

The act increases, from \$501 to \$1,000, the amount of annual income taxes a taxpayer must owe before being penalized for not filing a return or for underpaying estimated taxes. The penalty is 1% interest

on the under- or unpaid amount for each month or part of a month of nonpayment.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2004.

CHARITABLE CHECK-OFFS FROM INCOME TAX REFUNDS (§ 7)

The act simplifies the format for taxpayers to donate contributions from state income tax refunds to five designated charities. It eliminates the requirement that income tax forms show four check-off boxes for each charity, three with suggested whole-dollar donations (the lowest of which must be at least \$2) and a blank box for a taxpayer to enter another amount. Instead, it requires only a blank box for each charity, in which a taxpayer must enter a contribution in whole dollars.

By law, the five charitable accounts listed on state income tax forms are for organ transplant, AIDS research, endangered species/wildlife, breast cancer research and education, and safety net services.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2004.

CIGARETTE DEALER AND DISTRIBUTOR CUSTOMER REPORTS (§§ 8 & 9)

The act eliminates the DRS commissioner’s authority to adopt regulations requiring each cigarette dealer and distributor to report annually the names and addresses of its customers and to update the information by the 25th of each month. It also eliminates the penalty for willfully failing to comply. The penalty was a fine of up to \$1,000, imprisonment for up to one year, or both.

EFFECTIVE DATE: Upon passage

OYSTER HARVESTING LICENSE AND TAX (§§ 10 & 13)

The act eliminates requirements that people who harvest oysters from state-seeded shellfish grounds (1) be licensed by DRS, (2) pay a quarterly tax of 10% of the retail value of the harvested oysters as determined by regulations adopted by the agriculture commissioner, and (3) keep records of amounts harvested for three years and allow the DRS commissioner or her agents and officers to inspect them on demand.

It also eliminates:

1. the requirement that revenue from assessments be deposited in the state Shellfish Fund;
2. the penalty for failing to pay the assessments;
3. requirements for harvesters to file quarterly returns with DRS;

4. a requirement that the DRS commissioner adopt regulations to implement the licenses and assessments;
5. provisions making the DRS collection procedures and powers under the admissions and dues taxes apply to the oyster tax; and
6. an obsolete requirement that the DRS and agriculture commissioners report on the oyster licensing and tax program to the Finance, Revenue and Bonding Committee by February 1, 1990.

EFFECTIVE DATE: Upon passage and applicable to calendar quarters starting on or after July 1, 2004.

HOSPITAL PREMISES SALES AND USE TAX EXEMPTION (§§ 11 & 12)

The act exempts items sold on the premises of a for-profit hospital by a federally tax-exempt nonprofit organization from sales and use taxes. Items sold to or by certain nonprofit health care institutions, including nonprofit hospitals, were already exempt. The act's exemption is retroactive to January 1, 2002.

EFFECTIVE DATE: Upon passage and applicable to sales occurring on or after January 1, 2002.

PA 04-205—sSB 29

*Finance, Revenue and Bonding Committee
Appropriations Committee*

AN ACT CONCERNING TOURISM

SUMMARY: This act changes the name of the Connecticut Commission on Arts, Tourism, Culture, History and Film to the Connecticut Commission on Culture and Tourism (CCCT). It requires CCCT to prepare an annual, instead of a biennial, budget and submit it to the Office of Policy and Management (OPM) beginning with FY 2006, as existing law requires.

Prior law required CCCT to annually submit its biennial budget and an accounting of its prior year expenditures directly to OPM and the legislature. The act requires CCCT to submit a copy of these documents to the legislature.

The act expands the purpose of a fundraising foundation CCCT may establish and requires CCCT to work with the Amistad Committee, Inc. of New Haven on commemorating sites related to African-American history.

The act allows the 11 former tourism districts to transfer their assets and liabilities to the five new districts created by PA 03-6, June 30 Special Session. It also makes it easier for the former districts to comply with the statutory single audit requirement.

Lastly, the act drops the requirement that the visitor welcome centers provide certain information services to visitors and makes several technical changes.

EFFECTIVE DATE: Upon passage

CCCT

Art Foundation

The law allows CCCT, as the Connecticut Commission on the Arts' successor agency, to establish a nonprofit foundation to raise funds for artistic and cultural activities. The act expands the list of eligible activities to include heritage, historic preservation, and humanities.

Freedom Trail

The act requires CCCT, in conjunction with the Amistad Committee, Inc. of New Haven, to establish a program commemorating Connecticut sites associated with the Underground Railroad, the abolition of slavery, and the history and movement of African-American citizens toward freedom. It also requires these two organizations to designate and mark sites of the Freedom Trail. Prior law required them to mark sites along this trail with plaques related to minority history.

FORMER TOURISM DISTRICTS' FINANCES

Transferring Assets and Liabilities

The act allows the former districts to transfer their assets and liabilities to the new regional districts. A former district can transfer a specified share of its cash surplus to a new district as long as that district serves some of the same towns as the former district. Table 1 shows the share of the cash surplus each former district may transfer to one or more new districts.

Table 1: Distribution of Cash Surplus from Former to New Districts

<i>Former District</i>	<i>New District</i>	
	<i>District</i>	<i>Percent of Assets</i>
Northeastern	Eastern	100%
Southeastern	Eastern	100%
North Central	Central	100%
Greater Hartford	Central	95%
	Northwestern	5%
Central Connecticut	Central	80%
	South Central	20%
Connecticut	Central	60%

Valley	South Central	40%
Greater New Haven	South Central	67%
	Northwestern	20%
	Southwestern	13%
Litchfield Hills	Northwestern	100%
Housatonic Valley	Northwestern	100%
Greater Waterbury	Northwestern	100%
Greater Fairfield	Southwestern	100%

With the CCCT director's approval, the act also allows a former district to transfer non-cash assets to a new district that also serves some of the same towns as the former district. These assets include fixed assets and leases.

The act sets conditions under which the former district can transfer its liability to a new district. The former district may do so if (1) the CCCT determines that the proposed transfer is fair and equitable, (2) it and the new district's board of directors approve the transfer, and (3) the new district budgets funds to cover the liabilities.

Single Audit

The former districts had to comply with the single audit requirement. PA 03-6, June 30 Special Session, terminated the 11 districts as of August 20, 2003, almost two months after the end of the fiscal year. The act extends the audit period for those districts that were still operating after the fiscal year to the date they actually terminated, but no later than January 1, 2004. By doing so, the act removes the need to submit a separate audit for the months in FY 2004 during which the districts were still operating.

VISITOR WELCOME CENTERS

The act drops requirements that the visitor welcome centers (1) have electronic systems visitors can use to obtain information about different tourist attractions and services; (2) provide free lodging reservation services; and (3) in conjunction with the regional tourism districts and the private sector, establish a highway radio station that continually encourages travelers to stop at the center and provides information about tourist attractions.

The act makes technical changes conforming the list of welcome centers, and deleting references to several centers that PA 03-6, June 30 Special Session, deleted from another section of the statutes.

BACKGROUND

CCCT

PA 03-6, June 30 Special Session, created the Connecticut Commission on Arts, Tourism, Culture, History and Film. The act charged the commission with largely the same missions that were assigned to several commissions and offices the act eliminated. These were the Arts, Historical, and Film commissions; the Tourism Council and Tourism Office; and the Film Office. It also required the Connecticut Humanities Council and the Connecticut Trust for Historic Preservation, two nonprofit entities, to operate in conjunction with the commission for strategic planning and financial reporting purposes.

Related Acts

PA 04-2 (§ 30), May Special Session, also changed the commission's name to the Connecticut Commission on Culture and Tourism.

PA 04-25 also requires the commission to recognize, document, and mark sites commemorating the same historical events as this act.

PA 04-218—sSB 35

Finance, Revenue and Bonding Committee

AN ACT CONCERNING CERTAIN TOBACCO PRODUCT MANUFACTURERS, A SALES TAX-FREE WEEK AND THE TAX ON HEALTH CARE CENTERS

SUMMARY: The act continues a sales tax exemption for clothing and footwear costing less than \$300 that applies during the so-called "sales-tax-free-week," which runs from the third Sunday in August to the following Saturday every year. Under prior law, the sales-tax-free week was scheduled to be eliminated as of July 1, 2004.

The act also adopts various reporting and other requirements and penalties to enforce the tobacco settlement agreement between the state and tobacco manufacturers. Starting with FY 2005, it annually appropriates \$100,000 to the Department of Revenue Services (DRS) and \$25,000 to the Attorney General's Office from the Tobacco Settlement Fund. The funds must be used to enforce the act and the state tobacco settlement law.

Finally, the act specifies that health care centers (HMOs) must pay the 1.75% premiums tax only on the net direct subscriber charges they receive on policies or contracts approved by the insurance commissioner. By

law, the commissioner must approve all HMO agreements with subscribers before they take effect.

EFFECTIVE DATES: The sales-tax-free-week continuation takes effect July 1, 2004 and applies to sales on or after that date. The annual appropriation for enforcing the tobacco settlement law takes effect July 1, 2004. The other tobacco settlement provisions take effect on various dates as shown below. The HMO premium tax provision takes effect on passage and applies to income years starting on or after January 1, 2005.

TOBACCO SETTLEMENT ENFORCEMENT

All Tobacco Product Manufacturers (§§ 1, 2)

By law, tobacco product manufacturers that sell cigarettes in Connecticut must either (1) enter into, and perform financial obligations under, the master settlement agreement between Connecticut and four leading tobacco companies or (2) pay into a qualified escrow account a specified amount for each cigarette they sell in the state. Tobacco companies that choose the former option are considered to be “participating manufacturers” and those that choose the latter are “nonparticipating manufacturers.”

The act requires all manufacturers whose cigarettes are directly or indirectly sold in Connecticut to certify, under penalty of false statement, to the DRS commissioner and the attorney general by April 30 every year that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow requirements for nonparticipating manufacturers. Making a false statement on a document other than a certified prevailing wage law payroll is a class A misdemeanor (see Table on Penalties).

Each manufacturer must include with its certification a list of its brand families. Under the act, a “brand family” is all styles of cigarettes (such as menthol, lights, kings, or 100s) sold under the same trademark. It includes cigarettes identified with a previously known brand through such things as the same or similar brand names, trademarks, logos, symbols, mottos, selling messages, or recognizable color patterns.

A manufacturer can include a brand family in its certification only if those cigarettes count towards the manufacturer’s master settlement agreement payment for the relevant year or payments to its escrow fund. But the state can still maintain that a particular brand family belongs to another manufacturer for purposes of calculating master settlement or escrow fund payments.

Thirty days before adding to or modifying its brand families, a manufacturer must update its list by executing and delivering a supplemental certification to

the commissioner and the attorney general. Manufacturers must keep all records and other information they relied on for their certifications for five years, unless the law requires them to keep records longer.

EFFECTIVE DATE: October 1, 2004

Nonparticipating Manufacturers (§ 2(c), (d))

In addition to the information required of all manufacturers, a nonparticipating manufacturer’s certification must also include:

1. a list of its brand families and the number of units of each sold in Connecticut in the preceding calendar year, with an asterisk marking any families no longer being sold here;
2. a list of its brand families sold in the state during the current year;
3. the name and address of any other company manufacturing the brand families in the preceding or current year;
4. the name, address, and telephone number of the financial institution where it has established the qualified escrow fund;
5. the account numbers for the fund and for the Connecticut subaccount;
6. the amount placed in the fund for cigarettes sold in Connecticut during the preceding calendar year, with the date and amount of each deposit and whatever confirming evidence or verification the commissioner or attorney general considers necessary; and
7. the amounts and dates of any withdrawals or transfers it made from the escrow fund or from any other qualified escrow fund that it ever paid into under the state’s tobacco settlement law and regulations.

Each nonparticipating manufacturer must also certify annually that it:

1. is either registered to do business in Connecticut or has appointed an agent for service of process here and notified the commissioner and the attorney general of the agent’s name, telephone number, and address;
2. has established and maintains a qualified escrow fund and executed a qualified escrow agreement governing the fund; and
3. complies with the state’s tobacco settlement law, the act, and their regulations.

EFFECTIVE DATE: October 1, 2004

DRS Directory (§ 3(a), (e))

The act requires the DRS commissioner, by July 1, 2005, to develop and make available to the public on the

DRS website and in other appropriate forms, a directory of (1) manufacturers that have provided current and accurate certifications and (2) all brand families listed in those certifications. The commissioner cannot list the name and brand families of any manufacturer that has not filed the required certification or whose certification the commissioner determines does not meet the act's requirements.

The commissioner cannot list brand families for any manufacturer that has not:

1. made all required escrow payments to qualified funds governed by approved escrow agreements for any period or brand family, whether or not the manufacturer listed the brand family on its certification and
2. fully satisfied any outstanding final judgment, including interest, for violating the tobacco settlement law.

The commissioner's determination not to include a brand family or manufacturer in, or to remove either from, her directory is subject to the same appeal hearings available to those aggrieved by any of the commissioner's other actions relating to cigarette taxes and licensing. The commissioner must update the directory as needed.

EFFECTIVE DATE: October 1, 2004

Prohibitions and Penalties (§§ 3(b), 6, 7)

The act makes it a class A misdemeanor (see Table on Penalties) and an unfair and deceptive trade practice to:

1. put Connecticut tax stamps on cigarettes whose manufacturer or brand family is not listed in the DRS directory or
2. sell, offer to sell, distribute, or possess for sale unlisted cigarettes in Connecticut.

The act allows the DRS commissioner, in addition to other criminal or civil penalties, after a hearing and using the regular procedure for revoking or suspending a cigarette distributor's or dealer's license, to revoke or suspend the license of a tax stamper (i.e., anyone allowed to put Connecticut tax stamps on cigarettes) who violates these prohibitions and any regulations adopted under the act. Each stamp affixed to, and each offer to sell, cigarettes from an unlisted brand family or manufacturer is a separate violation. The commissioner may also levy a maximum civil penalty of five times of the retail value of the cigarettes or \$5,000, whichever is greater.

The act makes cigarettes sold or offered for sale in violation of its provisions contraband and applies existing confiscation, search, and forfeiture procedures to such cigarettes. It requires seized contraband cigarettes to be destroyed.

The act allows the attorney general, on the DRS commissioner's behalf, to ask for an injunction (1) against actual or threatened violations of the sale prohibitions or the tax stamper reporting and record-keeping requirements and (2) to compel stampers to comply with these provisions. It prohibits the commissioner from issuing or renewing the license of any stamper who does not certify, in writing and under penalty of false statement, that he will comply with the act.

When it prevails in any action to enforce the act, the state is entitled to its costs for investigation, for bringing the action, and for expert witness and reasonable attorneys' fees. The court must order anyone it determines has violated the act to pay to the state any profits, gains, gross receipts, or other benefits it received from the violation. Unless expressly provided, the act's remedies and penalties are cumulative both with each other and with those available under other state laws.

EFFECTIVE DATE: October 1, 2004

Tax Stamper Reports (§ 5(a))

The act requires stampers to give the DRS commissioner, within 25 days after the end of every month and more often if the commissioner directs, information she requires. The information must include a list, by brand family, of the total number of cigarettes, or an equivalent count for roll-your-own tobacco (under the tobacco settlement law, each 0.09 ounces of such tobacco equals one cigarette), on which the stamper put tax stamps. Stampers must maintain for five years, and make available to the commissioner, sales documentation and other information they rely on for the report.

Each stamper must also give the commissioner an e-mail address and update it as needed.

EFFECTIVE DATE: January 1, 2005

Quarterly Escrow Payments (§ 5(e))

The act allows the DRS commissioner to adopt regulations requiring nonparticipating manufacturers to make escrow deposits quarterly in the same year that the sales covered by the payment occur. It also allows her to require information to determine whether the quarterly payments are adequate.

EFFECTIVE DATE: January 1, 2005

Additional Information and Reporting (§5(c), (d))

The act allows the attorney general to require any nonparticipating manufacturer, at any time, to prove how much money is in its qualified escrow fund, including the amount excluding interest, and the amount

and date of each deposit and withdrawal. It requires the financial institution where the fund is established to provide the proof to the manufacturer.

In addition, the act allows the DRS commissioner to require a stamper or manufacturer covered by the state tobacco settlement law to submit other information, including samples of each brand family's packaging or labels, needed to allow the attorney general to determine a manufacturer's compliance.

EFFECTIVE DATE: January 1, 2005

Information Sharing (§ 5(b))

The act allows the commissioner to disclose to the attorney general any information she receives under the act that he requests to determine compliance and to enforce its provisions. It requires the officials to share information they receive with each other and allows them to share it with other state, federal, and local agencies, but only to enforce the act or Connecticut's or other states' tobacco settlement laws.

EFFECTIVE DATE: January 1, 2005

Distributor Tax Information Disclosure (§ 12)

The act allows the DRS commissioner to disclose certain information from a licensed cigarette distributor's cigarette tax returns to a nonparticipating manufacturer. The commissioner may disclose information only when (1) it relates to sales of the manufacturer's cigarettes to consumers in Connecticut, either directly or through a cigarette distributor, dealer, or similar intermediary and (2) there is reasonable cause to believe that the manufacturer is not complying with escrow payment requirements.

EFFECTIVE DATE: Upon passage

Agent for Service of Process Requirements (§ 4)

As a condition of having its brand families listed in the DRS directory, the act requires nonparticipating manufacturers not registered to do business here to appoint and maintain a Connecticut agent for receiving notice of any process, action, or proceeding against it under the act or the state tobacco settlement law or its regulations. Any process served on the agent constitutes legal and valid service on the nonparticipating manufacturer. The manufacturer must give the attorney general and the DRS commissioner the agent's name, address, and telephone number, along with satisfactory proof of his appointment and availability.

A nonparticipating manufacturer must give the commissioner and the attorney general 30 calendar days notice before terminating its agent's authority and proof that it appointed a new agent at least five days before

ending its existing agent's appointment. If its agent resigns, the manufacturer must notify the officials and provide proof of a new appointment no more than five days later.

The act makes the secretary of the state the agent for service of process for any nonparticipating manufacturer whose products are sold in Connecticut but who has not appointed an agent. Proceedings against such a manufacturer may be brought by serving process on the secretary, but the secretary's appointment does not satisfy the agent appointment requirement for having the manufacturer's brand families listed in the DRS directory.

EFFECTIVE DATE: October 1, 2004

Severability and Relationship to Tobacco Settlement Law (§ 8)

If a court finds that any of the act's enforcement provisions conflict with those of the state tobacco settlement law, the tobacco settlement law prevails. The act also invalidates any of its parts that cause the state tobacco settlement law to lose its status as a qualifying or model statute under the tobacco master settlement agreement and specifies that any invalidated parts do not affect the validity of the remainder.

EFFECTIVE DATE: October 1, 2004

NONPARTICIPATING MANUFACTURER ESCROW ACCOUNT REFUNDS (§§ 9, 10)

The act changes the conditions for refunding excess escrow account payments to nonparticipating manufacturers. Under prior law, funds could be released from an escrow account if the manufacturer showed that the amount it had to place in escrow in any year was more than Connecticut's share of the total payment it would have had to make for the year if it had participated in the settlement agreement, before any required adjustments or offsets. The act instead allows release only if the manufacturer shows that the amount it had to pay on account of its Connecticut sales was greater than all its required master settlement agreement payments would have been, after final determination of all adjustments. The act invalidates the change if it is found unconstitutional by an appropriate court.

EFFECTIVE DATE: July 1, 2004 for the change in escrow refund conditions; upon passage for the provision invalidating the change if a court finds it unconstitutional.

BACKGROUND

Cigarette Licensees

Anyone wishing to sell cigarettes in the state must have a license from DRS. There are two kinds of licenses. Cigarette manufacturers, wholesalers, and large-scale cigarette retailers (those who operate five or more retail outlets or 25 or more cigarette vending machines) are licensed as “distributors.” All other sellers are considered “dealers.”

Model Statute

The state tobacco settlement law (CGS §§ 4-28h & 4-28i) is the “model statute” required under the tobacco master settlement agreement. States without model statutes have their allotments from the settlement reduced by up to 65%.

Unfair and Deceptive Trade Practice

The Connecticut Unfair Trade Practices Act (CUTPA) prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer Protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violating a restraining order.

PA 04-228—sHB 5475

*Finance, Revenue and Bonding Committee
Transportation Committee*

AN ACT CONCERNING THE SITUS OF MOTOR VEHICLES FOR PROPERTY TAX PURPOSES

SUMMARY: This act explicitly subjects all registered and unregistered motor vehicles and snowmobiles (i.e., vehicles) operating or located in Connecticut to the property tax. It applies to any vehicle even if it is not being used or is incapable of being used but remains in Connecticut. It also applies to any vehicle registered in another state if it most frequently leaves from or returns to a Connecticut town.

The act sets rules for determining the town where a vehicle is subject to the tax (i.e., situs). One rule

requires a vehicle’s owner to pay taxes to the town where the vehicle most frequently leaves from, returns to, or remains in during the normal course of its operation. Different rules apply to vehicles owned by nonresidents and recreational and construction vehicles. The act allows businesses whose vehicles are registered in one town but taxed in another to declare them in the taxing town.

The act requires the motor vehicles commissioner to annually provide tax assessors a list of vehicles subject to taxation in their respective towns. It also clarifies the law under which the commissioner provides assessors with lists of vehicles that were registered on or after the October 1 assessment date.

EFFECTIVE DATE: Upon passage, except for the provisions regarding the motor vehicles commissioner, which take effect July 1, 2004, and the situs rules, which take effect upon passage and apply to any assessment year.

DETERMINING IF A VEHICLE IS SUBJECT TO PROPERTY TAXES IN CONNECTICUT

The act provides two sets of rules for determining a vehicle’s situs. The first set is used to determine if a vehicle is subject to property taxes in Connecticut, regardless of whether it is registered here. According to that rule, its owner is liable for taxes here if the vehicle, during the normal course of operation, most frequently leaves from, returns to, or remains in a Connecticut town.

Existing law provides a similar rule for determining if a vehicle registered in another state is subject to property taxes in Connecticut. Under that rule, a vehicle is subject to taxes here if it most frequently leaves from, returns to, or remains in one or more points within Connecticut during the normal course of its operation. If a Connecticut resident owns the vehicle, the law establishes a presumption that the situs is his town of residence unless that town’s assessor can be convinced that the owner resides in a different town.

DETERMINING THE TOWN WHERE A VEHICLE IS SUBJECT TO TAXES

The second set of rules is used to determine the town where the vehicle is subject to property taxes. These rules vary depending on the vehicle’s registration; whether the owner also operates the vehicle; and, in some cases, on its type.

Registered Vehicles

Owner/Driver. The act requires tax assessors to include a vehicle a person owns and operates in the town’s grand list if the vehicle, during the normal

course of its operation, most frequently leaves from, returns to, or remains in that town.

The act establishes a presumption that that town is also the town where the owner resides unless the act explicitly states otherwise. For an individual, the town of residence is the town where he legally resides. His residence must consist of a true, fixed, and permanent home to which he intends to return after any absence.

If the owner is a business or other organization, the act presumes that the taxing town is the town where the organization has established a site for conducting the purposes for which it was created. If the organization has sites in several towns, the situs for each vehicle is the town where the vehicle, during the normal course of its operation, most frequently leaves from, returns to, or in which it remains.

Employee Vehicles. The act's situs rule also applies to situations where an organization assigns a vehicle it owns to an employee for his exclusive use. In those situations, an assessor must include the vehicle in the grand list if the employee resides in the town and the vehicle most frequently leaves from, returns to, or remains in the town.

Leased Vehicles. Under the act, the situs for leased vehicles is the town where the lessee resides. This rule applies to situations where the vehicle's owner or the owner's employee leases the vehicle.

Recreational Vehicles. The act's situs rules for registered recreational vehicles vary depending on whether the vehicle is primarily operated in Connecticut. For those that are, the assessor must include the vehicle in the town's grand list if the vehicle most frequently leaves from, returns to, or remains in the town while it is being used for recreational purposes. For those that are primarily used in other states, the assessor must include the vehicle if its owner resides in the town. These rules apply to campers, camp trailers, and motor homes.

Construction Vehicles. The situs rules for construction vehicles depend on the amount of time a vehicle is used for a project located in any one town. The assessor must include the vehicle in the grand list if the vehicle was being used in the town for at least three months prior to the October 1 assessment date in any assessment year.

If the vehicle was being used in more than one town for three or more months before that date, the situs depends on the three-month period nearest the October 1 assessment date. In other words, the assessor of the town where the vehicle was used for the three or more months that are nearest to October 1 must list the vehicle in the town's grand list.

The rules apply to vehicles used for construction, building, grading, paving, or similar projects, or to facilitate these projects.

Vehicles Owned by Nonresidents

The situs for vehicles owned by nonresidents is the town where the vehicle, during its normal course of operation, most frequently leaves from and returns to. The exceptions to this rule are similar to those for construction vehicles:

1. If a vehicle most frequently leaves from, returns to, or remains in several towns during its normal course of operation, the situs is the town where the vehicle was located for three or more months before the October 1 assessment date during any year.
2. If, instead, the vehicle is located in several towns for three or more months before that date, the situs is the town where it was located for the three or more months nearest to the October 1 assessment date.
3. Lastly, if the vehicle is not located in any town for three or more months before the assessment date, the situs is the town where the vehicle was located on that date.

ASSESSOR COOPERATION

The act requires assessors to share information about vehicles that are registered in one town but taxed in another. The assessor of the town that taxes a vehicle must notify the assessor of the town where it is registered about that fact and provide the owner's name and address and the vehicle's identification number. The two assessors must work together to comply with the act's situs rules and requirements for including the vehicle in the taxing town's grand list.

DEPARTMENT OF MOTOR VEHICLES LISTS

Existing law requires owners to provide certain information to the motor vehicles commissioner when registering a vehicle. The act requires them to identify the town where the vehicle is subject to the property tax. It also allows owners to register a vehicle in the town where it is subject to tax if they reside in a different town.

The act requires the commissioner to include the information he receives and other information he possesses in the list he prepares for each assessor of the vehicles subject to taxation in their respective towns. Under prior law, he had to include the owners' names and addresses and the vehicles' identification numbers, if available. Under the act, the commissioner must include the name of the taxing towns. He must annually prepare these lists and give them to the assessors by December 1, starting in 2004.

The act eliminates the requirement that the commissioner provide the Department of Revenue

Services with an annual list of the vehicle owners' names, addresses, and social security account or federal employer identification numbers.

The act clarifies the law under which the commissioner must provide assessors with lists of vehicles that were registered after October 1 but before the next August 1. These vehicles are subject to taxation and placed on the supplemental grand list. The act specifies that the list must indicate the vehicle's registration date. The law requires the assessor to prorate the vehicle's assessment based on that date.

BACKGROUND

Related Case

In *Paul Dinto Electrical Contractors, Inc. v. Waterbury* (266 Conn. 706 (2003)), the Connecticut Supreme Court held that a corporation should pay taxes on motor vehicles that it owns to the town where it maintains its principal place of business, not to the town where the vehicles are actually located. The case involved a company that assigned vehicles to its employees, including those that did not reside in the city where the company maintains its principal place of business. The company paid property taxes on these vehicles to the towns where its employees resided.

PA 04-229—HB 5476

Finance, Revenue and Bonding Committee

AN ACT CONCERNING PAYMENTS TO THE SECOND INJURY FUND BY AN EMPLOYER MUTUAL ASSOCIATION

SUMMARY: This act allows certain employer mutual associations to make payments owed to the Second Injury Fund without penalties or interest for five years. It also changes, starting January 1, 2005, the way such associations are assessed what they owe to the fund.

The act allows an employer mutual association organized before June 6, 1996 with (1) a membership of only health care providers and (2) a premium base derived entirely from health care organizations to make interest- and penalty-free payments to the fund for assessments due from January 1, 1996 to December 31, 2004. The payments may be made over a five-year period.

By law, employers' fund assessments are calculated either on paid losses ("self-insured") or a premium-based surcharge ("insured"). Under prior law, employer mutual associations covered by the act were assessed based on paid losses. Under the act, they are assessed through a surcharge based on a premium beginning January 1, 2005.

The Second Injury Fund is a state-run workers' compensation fund that, among other things, pays or contributes to workers' compensation benefits for workers (1) with preexisting disabilities who were reinjured before July 1, 1995, (2) whose employers are uninsured, or (3) who worked more than one job when they were injured.

EFFECTIVE DATE: October 1, 2004

PA 04-9—SB 441*General Law Committee***AN ACT IMPLEMENTING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO CONSUMER PROTECTION STATUTES****SUMMARY:** This act makes technical and grammatical changes in legislation enacted in 2003.

EFFECTIVE DATE: October 1, 2004

PA 04-11—HB 5161*General Law Committee***AN ACT CONCERNING OUTSIDE SERVICE OF ALCOHOL IN RESTAURANTS AND CAFES****SUMMARY:** Prior law allowed liquor selling establishments holding café and restaurant permits to serve patrons at outside tables, with the prior approval of the Department of Consumer Protection, only if the tables were not screened from public view. This act eliminates the prohibition against screening the tables.

EFFECTIVE DATE: October 1, 2004

PA 04-21—sSB 136*General Law Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING REGISTERING UNDERGROUND FUEL TANK REMOVERS****SUMMARY:** This act prohibits the consumer protection commissioner from issuing a home improvement contractor registration certificate to a contractor who holds himself out to be an underground fuel tank remover unless the applicant can show that he has (1) completed a hazardous material training program approved by the Department of Environmental Protection and (2) presented evidence of liability insurance coverage of \$1 million and a surety bond of at least \$250,000.

The act explicitly applies the Home Improvement Act (HIA) to the removal or replacement of residential underground heating oil storage tank systems. The HIA generally applies to, among other things, the repair, replacement, or improvement of land or buildings used as private residences. The act defines "residential underground heating oil storage tank systems" as underground tanks or tank combinations used in connection with property having four or fewer residential units with underground pipes and ancillary

equipment or connected containment systems used to contain petroleum that is at least 10% underground.

EFFECTIVE DATE: October 1, 2004

PA 04-22—sSB 138*General Law Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING THE MANUFACTURE OF BEDDING****SUMMARY:** This act (1) allows the sale of certain "sanitized" bedding and requires sanitizers to obtain a state permit, (2) prohibits the sale of certain returned bedding-related merchandise as new, and (3) requires bedding importers to be licensed.

EFFECTIVE DATE: October 1, 2004

SANITIZED BEDDING

The act allows the sale of certain filling material for bedding that has been sanitized using a process approved by the consumer protection commissioner. It defines "sanitized" as the direct application of chemicals to kill pathogenic agents. By law, "bedding" means a mattress; pillow; cushion; quilt; bed pad; comforter; sleeping bag; upholstered spring bed; box spring; davenport; bedspring metal couch; metal bed; metal cradle; hammock pillow; upholstered furniture; or similar article used or meant to be used for sleeping, resting, or reading. The act applies to filling material that comes from an animal or fowl; contains bugs, vermin, insects, or filth; contains burlap or other material that has been used for baling; or is second-hand. The law already allows the sale of such material after it has been sterilized.

The act requires anyone who sanitizes bedding to obtain a permit from the consumer protection commissioner. An applicant must pay a \$25 annual fee. The act authorizes the commissioner to inspect sanitizers, examine their bedding and filling material, and order a retailer to stop selling bedding or filling material not sold according to law.

RETURNED MERCHANDISE

The law prohibits selling as new any bedding or filling material unless it is made from all new material. The act eliminates an exception that allowed the sale as new of bedding or filling material that had been returned by a consumer for exchange, alteration, or correction within 30 days after the delivery date.

IMPORTERS

The act requires anyone who imports bedding from outside the United States to be licensed by the consumer protection commissioner. The license fee is \$100 annually.

PA 04-31—sHB 5354

General Law Committee

AN ACT CONCERNING CHANGES IN OWNERSHIP OF RETAIL LIQUOR PERMIT PREMISES

SUMMARY: This act revises a requirement for certain retail liquor permit applications. Previously, a liquor permit applicant buying any retail liquor premises (for example, a package store or a restaurant) had to sign and file an affidavit with the application stating that (1) the seller's obligations for buying liquor at the premises have been paid or (2) the applicant has not received direct or indirect consideration from the seller for buying liquor remaining on the premises for which there are unpaid bills. The act instead requires the seller to sign and file the affidavit. It authorizes the consumer protection commissioner to waive the affidavit requirement if (1) the previous permit holder abandoned the premises before the buyer applied for a liquor permit and (2) the seller did not receive any consideration, direct or indirect, for the abandoned property.

EFFECTIVE DATE: October 1, 2004

PA 04-33—HB 5449

General Law Committee

AN ACT CONCERNING WINE ORDERED WITH HOTEL AND CAFE MEALS

SUMMARY: This act allows hotel and café patrons to take one open bottle of wine from a premises holding a liquor permit under the same conditions that restaurant patrons may do so. The patron must purchase the wine with a full course meal and partially consume it with the meal on the premises. The liquor permittee or an employee must securely seal the bottle and place it in a bag.

A "full course meal" is a diversified selection of food that ordinarily cannot be consumed without using tableware or conveniently consumed while standing or walking.

EFFECTIVE DATE: October 1, 2004

PA 04-42—sSB 140

General Law Committee

AN ACT CONCERNING THE USE OF GROCERY STORE BEER PERMIT PREMISES

SUMMARY: This act allows holders of grocery store beer permits to lease up to 50% of the total square footage of the premises to anyone for any legal reason. The act authorizes them to do so regardless of the laws that (1) authorize the Department of Consumer Protection to suspend, revoke, or refuse to issue liquor permits because the applicant has not been given full authority and control of the permit premises and of the conduct of the entire premises and (2) concern the physical separation of the permit premises and the rest of a building in which a premises is located.

The act prohibits (1) liquor sale or consumption in the leased area and (2) the commissioner from issuing a permit allowing its sale or consumption in the leased area.

EFFECTIVE DATE: October 1, 2004

PA 04-70—sHB 5450

General Law Committee

AN ACT CONCERNING GASOLINE FRANCHISES

SUMMARY: This act prohibits gasoline and motor fuel refiners and distributors from requiring or coercing franchisees (which can be either distributors or retailers) to sell gasoline at a specific price or in a specific price range.

It also eliminates the provision stating that the law prohibiting gasoline and motor fuel franchisors from doing certain things may not be construed as granting to a franchisor any right limited by other state or federal statute.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Franchisor Prohibited Activities

The law prohibits gasoline and motor fuel franchisors, directly or indirectly, from:

1. requiring a franchisee, when the agreement is made, from agreeing to a release, assignment, novation, waiver, or estoppel that would relieve anyone from liability imposed by the law on gasoline and motor fuel franchises;
2. prohibiting the right of free association among franchisees;

3. prohibiting the transfer by will of the franchise to a spouse or child;
4. requiring or prohibiting a change in franchise management unless for good cause stated in writing;
5. imposing unreasonable standards of performance;
6. failing to deal in good faith;
7. selling, renting, or offering to sell to a franchisee a product or service for more than a fair and reasonable price;
8. imposing on a franchisee, by written or oral contract, rule, or regulation, any standard of conduct unless the franchisor proves that it is reasonable and necessary;
9. discriminating among franchisees in charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or other business dealings unless necessary to be fair to a particular franchisee or to the extent the franchisor shows that the classification is reasonable on certain grounds; or
10. notifying a franchisee of a claimed breach of contract for good cause later than 180 days from (a) the date the good cause arose or (b) the franchisor knew or should have known of the good cause.

PA 04-71—HB 5452*General Law Committee**Judiciary Committee***AN ACT CONCERNING GUIDE AND ASSISTANCE DOGS**

SUMMARY: This act gives the same rights of use and entry to someone who volunteers to train a guide or assistance dog as are already enjoyed by someone employed to train these dogs. Specifically, it allows a volunteer to travel on any mode of public transportation and enter any place of public accommodation offering its services to the public. It makes it a class C misdemeanor (see Table on Penalties) to deny a volunteer trainer and dog access. For the volunteer to enjoy these rights, the sponsoring organization must (1) authorize the volunteer to raise dogs to become guide or assistance dogs and (2) have the dog identified with ID tags, ear tattoos, bandanas on puppies or coats on adult dogs, or leashes and collars.

EFFECTIVE DATE: October 1, 2005

WHERE THE DOG MUST BE ADMITTED

The act requires a dog and trainer to be admitted to a train or other mode of public transportation and to any

place of public accommodation offering services, facilities, or goods to the public, including public buildings, inns, restaurants, hotels, motels, tourist cabins, and places of amusement. The act also applies to dwellings when the trainer is a guest of a lawful occupant, but owner-occupied, two-family houses and room-rentals are exempt.

PA 04-107—sSB 401*General Law Committee**Public Health Committee***AN ACT CONCERNING ELECTRONIC TRANSMISSION OF PRESCRIPTIONS BETWEEN PRESCRIBERS AND LICENSED PHARMACIES**

SUMMARY: This act allows electronic data intermediaries to transfer data between a licensed prescribing practitioner and a pharmacy chosen by the patient and licensed in the United States under state or territorial law. It defines “electronic data intermediaries” as entities that provide the infrastructure to connect a prescribing practitioner’s computer system or other electronic devices with those of a pharmacy to transmit (1) electronic prescription orders, (2) refill authorization requests, (3) communications, and (4) other patient care information. It prohibits the electronic data intermediaries from altering data except as necessary for technical processing purposes.

It allows and sets conditions on archiving data.

It requires electronic data intermediaries to obtain the approval of the Department of Consumer Protection (DCP) commissioner and the commissioner to adopt regulations setting approval criteria.

EFFECTIVE DATE: October 1, 2004

ARCHIVED DATA

The act allows electronic data intermediaries to archive only the electronic transmission data necessary to provide for proper auditing and security of transmissions. The data may be kept only for the period necessary for auditing purposes. The act requires intermediaries to maintain patient privacy and confidentiality of all archived information as required by state and federal law. However, there appear to be no state laws that specifically apply to electronic data intermediaries and it is unclear whether federal regulations apply.

DCP APPROVAL

The act requires an electronic data intermediary seeking DCP approval to apply to the pharmacy

commission. It requires the DCP commissioner, with the advice and assistance of the commission, to adopt regulations establishing approval criteria. These must include requirements for the intermediaries to (1) follow procedures to transmit and retain prescription data and (2) use mechanisms to safeguard the confidentiality of this data.

BACKGROUND

Confidentiality Laws

State law apparently does not have any provisions specifically requiring electronic data intermediaries to keep information confidential. The confidentiality provision in the Pharmacy Practice Act applies to pharmacists and pharmacies (CGS § 20-626). The federal Health Insurance Portability and Accountability Act's (HIPAA) regulations apply to health plans, health care clearinghouses, and health care providers who conduct business electronically (45 CFR Part 160). The regulations set confidentiality standards and penalties for covered entities. If the electronic data intermediaries are covered entities, the HIPAA confidentiality standards apply. Generally, these provide that an individual's health information may only be used for health purposes.

PA 04-111—HB 5453
General Law Committee

AN ACT CONCERNING FARM WINERIES

SUMMARY: This act relaxes one of the standards for operating a Connecticut farm winery. A farm winery is a business located on a farm that manufactures and sells wine and brandies distilled from grape and other fruit products, such as brandy, grappa, and eau-de-vie.

The Liquor Control Act required, as a condition for obtaining a permit, a farm winery to produce in the state an average crop of fruit equal to at least 51% of the fruit used to manufacture the farm's wine. The act reduces the percentage to 25%.

EFFECTIVE DATE: October 1, 2004

PA 04-170—sSB 476
General Law Committee
Banks Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING INCOME TAX REFUND ANTICIPATION LOAN DISCLOSURES

SUMMARY: This act requires refund anticipation loan facilitators to disclose certain facts when a borrower applies for the loan. It defines "refund anticipation loan" as a loan arranged to be paid directly from the proceeds of the borrower's income tax refund.

The act subjects violators to a criminal penalty and civil liability.

EFFECTIVE DATE: October 1, 2004

DISCLOSURES

The act requires a facilitator to disclose, when the borrower makes the loan application, on a document separate from the application:

1. the estimated fee for preparing and electronically filing a tax return,
2. the refund anticipation loan fee schedule,
3. the annual percentage rate (APR) using guidelines established by official staff interpretations of Regulation Z of the federal Truth in Lending Act,
4. the estimated total cost to the borrower for the refund anticipation loan,
5. the estimated number of days within which the loan will be paid if the borrower's application is approved,
6. that the borrower must repay the loan and related fees if the tax refund is not paid or not paid in full, and
7. that electronic filing is available and the average time within which the Internal Revenue Service says a consumer can expect to receive a refund if he files his return electronically and does not obtain an anticipation loan.

It defines "refund anticipation loan fees" as all charges, fees, or other consideration charged or imposed for making a refund anticipation loan. The term does not include charges, fees, or other consideration a facilitator charges or imposes in the ordinary course of business for services unrelated to making the loan, such as fees for tax preparation services or for filing tax returns electronically.

Under the act, a "facilitator" means the person who, acting alone or in conjunction with another, (1) makes the loan; (2) processes, receives, or accepts an application for delivery; (3) issues a check in payment of a loan; or (4) otherwise facilitates a refund anticipation loan. The act specifies that the term does not include a bank, savings and loan association, credit union, a licensed Connecticut small loan lender operating under state or federal law, or a person who acts solely as an intermediary and does not deal with the public.

PENALTIES

The act subjects a facilitator who fails to make the required disclosures to a \$500 criminal penalty for each violation. Further, it makes facilitators liable to the aggrieved borrower for three times the amount of the refund anticipation loan fee, plus reasonable attorney's fees. Aggrieved borrowers may sue or the attorney general may sue on their behalf.

BACKGROUND

Regulation Z

The Board of Governors of the Federal Reserve System issued Regulation Z to implement the Truth in Lending Act. Its purpose is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. Among other things, it requires the APR to be calculated and stated in a standard way.

PA 04-194—sSB 289

General Law Committee

Insurance and Real Estate Committee

AN ACT CONCERNING HOME HEATING OIL DEALERS

SUMMARY: This act requires a home heating oil dealer that advertises a price to offer that price for at least 24 hours or until the next price is advertised, whichever comes first. By law, home heating oil dealers must register with the Department of Consumer Protection (DCP). The act prohibits a home heating oil wholesaler from selling to anyone other than a registered dealer. It requires DCP to establish a list of all registered dealers and make it available to all wholesalers doing business in the state.

The act requires a dealer's insurance company to notify the DCP commissioner in writing when it cancels required insurance. The law requires dealers to have general liability insurance coverage and \$1 million coverage for environmental damage. The act requires the commissioner to revoke the registration of a dealer without the required insurance.

Finally, it requires registered dealers to display their registration numbers in all advertisements and in other dealer-prepared or -issued materials that contain information about the dealer.

EFFECTIVE DATE: October 1, 2004

PA 04-202—SB 477

General Law Committee

Judiciary Committee

AN ACT CONCERNING CONSTRUCTION CONTRACTS

SUMMARY: This act (1) applies the existing private sector construction contract law to all types of private sector construction work rather than just work done on a commercial or industrial building, (2) specifies that it applies to nonprofit corporations, (3) makes the use of statutory default payment schedule provisions mandatory, (4) establishes a subcontractor's right to sue an owner for payment, and (5) specifies that the exemption from the law for United States government contracts includes contracts funded or insured by the federal Department of Housing and Urban Development (HUD). The law exempts state, federal, and municipal construction contracts and contracts intended for residential occupancy containing four or fewer units. The act also exempts small construction contracts.

EFFECTIVE DATE: October 1, 2004

APPLICATION OF THE LAW AND NONPROFIT CORPORATIONS

The act redefines "owner" to include nonprofit corporations. Prior law defined it as an individual, corporation, partnership, limited partnership, limited liability corporation, or other business entity that is the owner of record or lessee of real property on which a commercial or industrial building is to be built, renovated, or rehabilitated. The act applies the law to construction performed in all settings rather than just work performed on commercial or industrial buildings for which a certificate of occupancy is required. Under the act, contracts for federal, state, and municipal work and contracts for residential construction containing four or fewer units continue to be exempt. The act specifies that the federal contract exemption includes projects funded or insured by HUD. The act also exempts a contract between an owner and contractor valued at \$25,000 or less and the subcontracts that result from it.

PAYMENT PROVISIONS

Prior law required contracts to include payment schedule provisions, unless the parties explicitly agreed otherwise. The act makes the payment schedule provisions mandatory and requires parties to pay within 30 days, instead of 15 days, after receiving a payment demand. It specifies that a demand made to an owner must be written. Specifically, the act requires:

1. owners to pay amounts due for labor and materials within 30 days after receiving a written payment request,
2. general contractors to pay for labor and materials within 30 days after the general contractor received payment for such labor and materials from the owner, and
3. general contractors to require their subcontractors and suppliers to include comparable provisions in their contracts with other subcontractors and suppliers.

SUBCONTRACTOR'S RIGHT TO SUE AN OWNER

The act requires each owner who has failed or neglected to pay a contractor for labor or materials as required by a construction contract to pay promptly when demanded to do so by someone who has not been paid by the contractor for the labor or materials. It requires the demand for payment to be served on the owner with a copy to the contractor sent by certified mail, return receipt requested, to any address at which the owner or contractor conducts business.

If the owner fails to make the payment, the act gives the person making the demand a direct right of action against the owner in the Superior Court for the judicial district in which the construction project is located. The owner's obligations to make direct payments to the contractor, subcontractors, or suppliers giving notice under this provision is limited to the amount owed to the contractor by the owner for work performed under the contract as of the date the notice was sent.

BACKGROUND

Private Sector Construction Contract Law

The law:

1. limits retainage (i.e., an amount withheld from payments conditioned on substantial or final completion of the work) to 7.5% and generally requires such funds to be kept in an escrow account;
2. prohibits contract provisions in which the subcontractor waives the right to a mechanic's lien;
3. prohibits contract provisions requiring disputes to be settled in, or under the laws of, another state; and
4. requires certain notices to be posted at the job site (CGS §§ 42-158i to 42-158o).

PA 04-207—sSB 399

General Law Committee
Judiciary Committee

AN ACT CONCERNING INTRODUCTORY RATE OFFERS AND AUTOMATIC RENEWAL OF CONSUMER CONTRACTS

SUMMARY: This act (1) requires offers made at an introductory rate to contain the same disclosures required of trial offers, (2) requires contracts containing automatic renewal clauses to include notice provisions that depend on the original term of the contract, and (3) limits the application of the trial offer law to consumer goods and services (those used primarily for personal, family, or household purposes). If contracts with automatic renewal clauses do not contain the required notices, the act deems products or services provided to the consumer after the scheduled end of the contract to be an unconditional gift without any obligation on the recipient's part.

The act establishes exemptions from the trial offer law and its provisions on introductory rate offers and contracts with automatic renewal clauses.

A violation of the act's requirements is deemed to be an unfair trade practice.

EFFECTIVE DATE: October 1, 2004

OFFERS MADE AT INTRODUCTORY RATES

The act generally requires anyone who sells or offers to sell consumer goods or services at an introductory rate that will change at the end of the introductory period to provide a clear and conspicuous written notice informing the purchaser that he can cancel at the end of the introductory period. The notice must include the cancellation procedure. The act requires a seller to give the notice to the purchaser with (1) any written promotional material provided before the start of the introductory period or (2) the initial delivery. The act states that goods or services provided after the introductory period ends and after the contract has been cancelled or not renewed are deemed an unconditional gift. These provisions already apply to trial offers.

OFFERS CONTAINING AUTOMATIC RENEWAL CLAUSES

Contracts Lasting Longer than 180 Days

The act generally requires anyone who sells or offers to sell consumer goods or services under a written contract that (1) will last longer than 180 days (six months) and (2) includes a provision automatically renewing it for more than 31 days, to provide a clear

and conspicuous written notice informing the purchaser that he can cancel the contract. The notice must (1) include the cancellation procedure and (2) be provided at least 15, but not more than 60, days before the end of the contract term.

Contracts Lasting Up to 180 Days

The act generally requires anyone who sells or offers to sell consumer goods or services under a written contract that (1) will last up to 180 days and (2) includes a provision automatically renewing it for more than 31 days to include in the contract a clear and conspicuous notice that the recipient may cancel the contract and the cancellation procedure. It prohibits requiring the consumer to exercise his cancellation right more than 60 days before the scheduled end of the contract term.

EXEMPTIONS

The act exempts from the law on trial offers (1) contracts subject to the state's Truth-in-Lending Act and (2) the sale of banking, insurance, and securities products and services, if the provision of the goods or services is subject to regulation or licensing by the state or a federal agency. The law already exempts negative option plans governed by federal regulations and utilities, their affiliates and subsidiaries, and intrastate communications providers that have an established and ongoing relationship with a consumer. It requires these companies to inform a purchaser of how to cancel.

The act makes the same exemptions for introductory rate offers and also exempts offers that disclose the "after-introduction" rate clearly and conspicuously in the contract from its introductory rate provisions.

It exempts from its automatic renewal provisions (1) contracts offered by licensed health clubs; (2) contracts subject to the state's Truth-in-Lending Act; (3) contracts between a condominium or housing association and a person other than an individual; and (4) the sale of banking, insurance, and securities products and services, if the provision of the goods or services is subject to regulation or licensing by the state or a federal agency. By law, the term "person" may extend and be applied to communities, companies, corporations, limited liability companies, societies, and associations.

BACKGROUND

Connecticut Unfair Trade Practice Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining

what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Connecticut's Truth-in-Lending Act

The act requires lenders to fully disclose the terms of credit being extended. Disclosure is meant to (1) protect consumers from becoming unknowingly obligated to pay hidden and unreasonable charges and (2) permit them to meaningfully compare terms of credit extended by different lenders.

Negative Option Plans

A "negative option plan" is automatically renewed unless the consumer exercises his option to terminate it. Federal regulations require negative option sellers to (1) clearly and conspicuously disclose the material terms of the plan in promotional material and (2) mail announcements identifying the merchandise in time for the subscriber to reject the selection. Failure to do so is an unfair trade practice under federal law. Federal regulations specify the material terms that must be disclosed and require the announcements to clearly identify the merchandise and rejection procedure (16 CFR § 425.1).

PA 04-208—SB 439

General Law Committee

Public Health Committee

Appropriations Committee

AN ACT CONCERNING PHARMACY TECHNICIANS

SUMMARY: This act prohibits anyone from acting as a "certified pharmacy technician" unless he is certified with the Department of Consumer Protection (DCP). It requires the department, when authorized by the pharmacy commission, to certify someone as a pharmacy technician if he (1) meets requirements for a registered pharmacy technician and (2) is certified by the Pharmacy Technician Certification Board or any other equivalent pharmacy technician certification program approved by the department.

The act authorizes the DCP commissioner to adopt regulations concerning the registration and activities of certified pharmacy technicians. It requires him, with the advice and assistance of the pharmacy commission, to adopt regulations concerning the ratios of certified pharmacy technicians to pharmacists in pharmacies and institutional pharmacies (those operating in places like acute care hospitals).

The act does not require a certificate to be renewed with DCP or set a state certification or renewal fee.

EFFECTIVE DATE: Upon passage

BACKGROUND

Registered Pharmacy Technicians

The law requires pharmacy technicians to register with the DCP commissioner. Registration qualifications must be (1) in accordance with the standards of an institutional pharmacy, care-giving institution, or correctional or juvenile training institution or (2) the standards established by DCP regulations (CGS § 20-598a).

Pharmacy Technician Certification Board

According to the board's website, it is governed by five organizations—the American Pharmacists Association, the American Society of Health-System Pharmacists, the Illinois Council of Health-System Pharmacists, the Michigan Pharmacists Association, and the National Association of Boards of Pharmacy (www.ptcb.org). Its certification is intended to be a means to assess and certify the skills necessary to help a supervising pharmacist practice pharmacy.

PA 04-230—sHB 5497

General Law Committee

Judiciary Committee

AN ACT DISCOURAGING THE SALE OF ALCOHOLIC LIQUOR TO UNDERAGE PERSONS AND INCREASING THE NUMBER OF TEMPORARY BEER OR LIQUOR PERMITS ISSUED ANNUALLY TO A NONCOMMERCIAL ORGANIZATION

SUMMARY: This act makes two unrelated changes to the Liquor Control Act. It allows liquor permittees, and their agents and employees, to require prospective purchasers whose age is in question to have their photographs taken and a photocopy of their driver's license or non-driver photo identity card made as a condition of selling or delivering alcohol to them. In a prosecution of a permittee, or his agent or employee, for

selling or giving liquor to a minor, the act makes it an affirmative defense that the individual sold or gave the liquor in good faith and in reasonable reliance on the identification provided by the minor. The defendant has the burden of proving an affirmative defense by a preponderance of evidence. It requires the Department of Consumer Protection to adopt regulations establishing guidelines and specifications for (1) the photographic equipment and (2) the format of the photograph. The act limits how information taken from the photograph and photocopy may be used.

The act also increases, from four to six, the combined total of temporary beer and temporary liquor permits a noncommercial organization may obtain in a calendar year.

EFFECTIVE DATE: October 1, 2004

INFORMATION TAKEN FROM A PHOTOGRAPH OR PHOTOCOPY

The act prohibits permittees, or their agents or employees, from (1) using a photograph or photocopy for any purpose other than as a condition of selling or delivering liquor to someone whose age is in question and presumably as evidence in a prosecution and (2) selling or otherwise disseminating a photograph, photocopy, or information taken from the photocopy, to a third party for any purpose, including marketing, advertising, or promotional activities. It states that a permittee, or their agents or employees, may release a photograph, photocopy, or information pursuant to a court order.

BACKGROUND

Temporary Liquor and Beer Permits

A temporary liquor permit allows the sale of any type of alcoholic liquor (alcohol, beer, spirits, and wine) at an outing, picnic, or social gathering conducted by a *bona fide* noncommercial organization. A temporary beer permit is similar except that its holder may sell only beer. The law requires the profits to be kept by the organization holding the event. The permits are effective only for the time period set by the Department of Consumer Protection.

PA 04-233—HB 5163

General Law Committee

Human Services Committee

Appropriations Committee

**AN ACT CONCERNING FUNERAL AND BURIAL
PLOT ALLOWANCES**

SUMMARY: This act requires the Department of Social Services commissioner to apply certain asset exclusions uniformly throughout the state when determining eligibility for the Medicaid, State Supplement, and Temporary Family Assistance programs. These are the exclusions for a burial fund

amount (\$1,200), the value of a burial plot, and the value of an irrevocable funeral contract (by law, limited to \$5,400). By statute, the \$1,200 burial fund amount is reduced by the value of a revocable or irrevocable funeral contract and the face value of a life insurance policy that the client may own.

The act defines “burial plot” as the purchase of a gravesite, opening and closing of a gravesite, cremation urn, casket, outer burial container, and headstone or marker.

EFFECTIVE DATE: October 1, 2004

PA 04-1—HB 5001*Emergency Certification***AN ACT AMENDING THE ELECTION CALENDAR FOR THE SELECTION OF DELEGATES TO STATE AND DISTRICT CONVENTIONS**

SUMMARY: This act postpones for one month the one-week period for selecting convention delegates and the deadline for certifying the selection before a primary for state and district offices. It makes the period for selecting delegates the 140th to 133rd days before the primary, rather than the 168th to 161st days before. It makes the deadline for certifying the delegate selection the 132nd, rather than the 160th, day before the primary.

EFFECTIVE DATE: Upon passage and applicable to primaries and elections held on or after that date.

BACKGROUND*Direct Primary Election Calendar*

PA 03-241, which established a direct primary for state and district offices and changed the dates for the primary and events leading up to it, moved up the date for selecting convention delegates from the 56th to 49th days before the delegate primary to the 168th to 161st days before the primary. Under that change, the last day of the delegate selection period coincided with town committee primaries, which were held on the first Tuesday in March. Thus, under that law, town committee members serving prior to the March primary selected state and district convention delegates.

PA 04-18—SB 127*Government Administration and Elections Committee***AN ACT CONCERNING THE EFFECT OF REDISTRICTING ON BALLOT ACCESS**

SUMMARY: The law sets conditions for a candidate's name to appear on the ballot for an office created after the last-preceding election, requiring him to (1) be a candidate of a party whose candidate for governor at the last election received either 20% of all votes or 1% of the votes for all candidates within the geographical limits of the newly created office's jurisdiction or (2) meet specific petitioning requirements. This act specifies that the terms "office created after the last-preceding election" and "newly created office" do not include an office for which the geographical representation boundaries have changed due to redistricting.

EFFECTIVE DATE: July 1, 2004**PA 04-32—HB 5437***Government Administration and Elections Committee***AN ACT AMENDING THE VOTER'S BILL OF RIGHTS**

SUMMARY: This act adds to the items specified in the Voter's Bill of Rights the right to:

1. vote by provisional ballot if they registered to vote but their names do not appear on the voter list;
2. information about the process for restoring their right to vote that was forfeited after their incarceration for a felony conviction; and
3. vote independently and privately at a polling place, regardless of their physical disability.

The act also informs voters of their right to report suspected voter's rights violations to an on-site elections moderator or file a complaint with the State Elections Enforcement Commission or the U.S. Department of Justice at their respective toll-free numbers.

By law, the secretary of the state must include these rights on the Voter's Bill of Rights posters that she must distribute to each municipality. The posters must be conspicuously placed at all polling places.

EFFECTIVE DATE: July 1, 2004**PA 04-36—HB 5589***Government Administration and Elections Committee***AN ACT CONCERNING THE LICENSING OF PUBLIC ACCOUNTANTS**

SUMMARY: By law, an out-of-state certified public accountant (CPA) can get a Connecticut CPA certificate if he has worked as an accountant for five of the 10 years preceding his application. Prior law required this work to be done out-of-state. This act allows work that an out-of-state CPA does in Connecticut to count towards the experience he needs for the certificate. By law, out-of-state CPAs may also receive reciprocity here by meeting all the requirements for certification (1) at the time of application or (2) at the time they received their out-of-state certificate.

EFFECTIVE DATE: Upon passage

PA 04-37—sHB 5545*Government Administration and Elections Committee***AN ACT CONCERNING THE GOVERNOR'S MANSION CONSERVANCY AND OTHER FOUNDATIONS RELATED TO STATE GOVERNMENT**

SUMMARY: This act (1) subjects to disclosure under the Freedom of Information Act (FOIA) certain information about foundations established to help the Department of Public Works (DPW) commissioner maintain the governor's residence and (2) exempts from FOIA certain information held or prepared in connection with the legislature's exercise of the constitutional impeachment power.

The act subjects to FOIA (1) a foundation's annual income and individual expenditures and contributions over \$200, (2) the names of the foundation's officers, and (3) the names of any state employees working for the foundation or on its behalf.

The act exempts from FOIA all information, records of interviews, reports, statements, depositions, notes, memoranda, or other data in the custody of, or obtained or prepared by, the House of Representatives, a House committee regarding impeachment, or the House or committee's staff. The exemption applies during any inquiry, investigation, impeachment, or other proceeding that began on or after January 1, 2004 and is conducted pursuant to the constitutional impeachment power, and expires when the committee transmits its final report to the House. The act also allows the committee to exercise its discretion to disclose any of the information before it sends the final report. It requires a public agency to continue to disclose any information it provides to the committee that is otherwise subject to FOIA disclosure. It also specifies that the act should not be construed to mean that an individual waives any privilege provided by law when he provides a document or other information to the committee.

Within 90 days after the conclusion of the final event in a House or Senate proceeding commenced on or after January 1, 2004 and conducted pursuant to the constitutional impeachment power, the act directs all documents, recorded data, information, and other tangible materials prepared, received, owned, used, or retained in the course of the inquiry, investigation, impeachment, trial, or other proceeding (except those that state or federal law exempt from disclosure) to be delivered to the State Library for preservation and archiving. It also requires electronic versions of these materials to be provided to the House and Senate clerks.

EFFECTIVE DATE: Upon passage

PA 04-38—sSB 386*Government Administration and Elections Committee
Judiciary Committee***AN ACT MAKING CERTAIN REFORMS TO THE STATE ETHICS CODES**

SUMMARY: This act makes several changes to the State Codes of Ethics. It:

1. increases, from three to five years, the statute of limitations for filing complaints of ethics violations with the State Ethics Commission;
2. increases the maximum civil penalty for ethics code violations from \$2,000 to \$10,000;
3. doubles the time, from 90 to 180 days, the state has to bring an action to void a contract entered into in violation of the ethics code; and
4. raises the penalty and criminal classification for intentional ethics code violations from a class A misdemeanor, which is punishable by up to one year in prison, a \$2,000 fine, or both, to a class D felony, which is punishable by up to five years in prison, a \$5,000 fine, or both. A person convicted of a felony loses the right to become an elector and cannot vote, hold public office, or run for office, although he can have these rights restored.

EFFECTIVE DATE: July 1, 2004

PA 04-58—SB 581*Government Administration and Elections Committee***AN ACT CONCERNING TECHNICAL CORRECTIONS TO GOVERNMENT ADMINISTRATION AND ELECTIONS STATUTES**

SUMMARY: This act clarifies that a provision exempting consultant services for information and telecommunications systems from the definition of a "personal service contractor" applies to the person, firm, or corporation providing those services. The definition is part of a law applicable to executive branch agency contracts with certain consultants. The act also makes minor and technical corrections.

EFFECTIVE DATE: October 1, 2004

PA 04-62—sHB 5181

*Government Administration and Elections Committee
Judiciary Committee*

AN ACT CONCERNING THE PENALTY FOR TRESPASS UPON CERTAIN STATE PROPERTY

SUMMARY: This act subjects people to varying maximum penalties, rather than a single maximum, for trespassing on land under the care and control of the Department of Public Safety, Legislative Management Committee, chief court administrator, and the boards of trustees of state institutions. Instead of the former maximum penalty of up to three months in prison, up to a \$100 fine, or both, the trespasser may, under the act and depending on the facts of each case, face the maximum penalties shown in Table 1.

Table 1: Criminal Penalties for Trespass

<i>Crimes</i>	<i>Crime Description</i>	<i>Penalty</i>
First-degree Criminal Trespass	Knowing that he is not licensed or privileged to be there, a person enters or remains in a place and (1) the owner of the property orders him not to enter or to leave or (2) in so doing, he violates a restraining or protective order entered in a domestic violence case.	Up to one year in prison, up to a \$2,000 fine, or both
Second-degree Criminal Trespass	Knowing that he is not licensed or privileged to be there, a person enters or remains in a building.	Up to six months in prison, up to a \$1,000 fine, or both
Third-degree Criminal Trespass	Knowing that he is not licensed or privileged to be there, a person enters or remains in a place (1) that belongs to the state and that is appurtenant to any state institution; (2) that is posted or fenced to keep out intruders; or (3) to hunt, trap, or fish.	Up to three months in prison, up to a \$500 fine, or both
Simple Trespass	To knowingly enter a place without license or privilege to be there, but without any intent to harm the property.	An infraction

The act also increases, from \$100 to \$500, the maximum fine for violating any regulation on the use of state property. People found guilty of this offense, continue to be subject to up to three months' imprisonment or both the fine and imprisonment.
EFFECTIVE DATE: Upon passage

PA 04-74—HB 5500

Government Administration and Elections Committee

AN ACT CONCERNING COMPLIANCE WITH THE FEDERAL HELP AMERICA VOTE ACT

SUMMARY: This act gives the State Elections Enforcement Commission (SEEC) the authority to receive and determine complaints and issue orders to enforce the federal Help America Vote Act (HAVA).

It permits the SEEC to impose a civil penalty of up to \$2,000 for each violation of the provisional ballot or mail-in voter registration law.

The act requires any court order for a new federal election to comply with HAVA's section on provisional voting and display of voting information if the order resulted from a voter's or candidate's successful claim that (1) he was aggrieved by an election official's ruling or in the casting of an absentee ballot or (2) votes were improperly counted. HAVA requires election officials to permit a voter to cast a provisional ballot in an election for federal office if his name is not on the voter registry list for the polling place but he declares he is eligible to vote. It also requires that certain voting information be posted at polling places.

Lastly, the act makes technical changes.

EFFECTIVE DATE: Upon passage

HAVA ENFORCEMENT

The act gives SEEC authority to receive and determine complaints and issue orders to enforce HAVA. It may receive complaints about the federal law's provisions establishing voting system standards, provisional voting and voting information requirements, the computerized statewide voter registry list, and requirements for voters who register by mail. Complaints must be in writing, notarized, and signed and sworn by the complainant, who can request a hearing in accordance with the Uniform Administrative Procedure Act. The commission must issue a final decision within 90 days unless the complainant agrees to an extension. If it fails to meet the 90-day (or extended) deadline, it must resolve the complaint within another 60 days under an alternative dispute resolution procedure it establishes.

BACKGROUND

HAVA

On October 29, 2002, Congress enacted the Help America Vote Act of 2002 (P. L. 107-252, 42 USC 15301 et seq.) to help states pay for voting system replacements, create the Election Assistance Commission, and set minimum election administration standards for jurisdictions with responsibility for administering federal elections.

PA 04-80—sHB 5592

Government Administration and Elections Committee

AN ACT PROVIDING FOR A SEPARATE LOCATION IN A MUNICIPALITY FOR PRESIDENTIAL BALLOTING

SUMMARY: This act authorizes municipal clerks to designate a location in a municipal facility for distributing, completing, and processing presidential ballot applications and distributing, casting, and returning presidential ballots on Election Day. The clerks may appoint one or more presidential ballot assistants to serve at the location and delegate to these assistants, whom they must train and supervise, any of the responsibilities the presidential ballot statutes assign to municipal clerks.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Presidential Ballots

The federal Voting Rights Act of 1965 (42 USC § 1973aa-1) requires states to provide by law for those otherwise qualified to vote who fail to meet a residency requirement to vote in an election for U. S. president and vice president. The presidential ballot is available to Connecticut residents who are not registered voters and former residents who have moved within 30 days before the election, and it allows them to vote for president and vice president only.

PA 04-87—sSB 160

Government Administration and Elections Committee

AN ACT CONCERNING STATE AGENCY PURCHASE ORDERS AND THE CORE-CT SYSTEM

SUMMARY: This act limits the alternative documentation that state agencies can use to purchase

goods or services to only that approved by the comptroller. By law, agencies can use purchase orders or other documentation to purchase non-emergency goods or services.

The act also deletes language made obsolete by the implementation of CORE-CT, the state's new accounting system.

EFFECTIVE DATE: October 1, 2004

PA 04-91—SB 21

Government Administration and Elections Committee

AN ACT PROHIBITING PERSONAL USE OF CAMPAIGN FUNDS AND CONCERNING RETENTION OF INTERNAL RECORDS AND REPORTING REQUIREMENTS REGARDING PARTY-BUILDING ACTIVITIES

SUMMARY: This act allows campaign treasurers to use a credit card to pay campaign debts. The law already allows them to pay them with checks or debit cards.

By law, campaign treasurers must file with the secretary of the state campaign finance statements, which consist of statements of contributions, expenditures, debts, and loan guarantors or cosigners. The act requires the treasurers to include in their expenditure report the name and address of each person or entity that actually benefited from the expenditure. When a candidate, campaign worker, or other principal or primary payee is reimbursed, this means an accounting of the person the candidate, worker, or payee paid. When a credit card is used, this means the expense report must include the name and address of the place where the card was used and the amount spent.

The act expands the (1) prohibition against anyone using campaign funds for personal use and (2) meaning of "personal use." Specifically, it bans the use of campaign funds for anyone's personal benefit. Prior law prohibited the funds from being used to personally benefit a candidate or his immediate family only. The act makes it a "personal use" for anyone to use these funds to cover expenses incurred in preparation to take public office.

The act gives candidates or committee workers seeking reimbursement from campaign funds the option to present any documentary evidence, instead of just receipts, as proof that they used their own money to pay a campaign-related debt. It requires campaign treasurers to keep these alternative, internal records and all other internal records of transactions the law requires to be included in campaign finance reports. Internal records include contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence that shows the expenditure was

for a lawful campaign purpose. By law, treasurers must retain records related to reported transactions for at least four years from the date of the report.

EFFECTIVE DATE: July 1, 2004

PA 04-112—HB 5499

Government Administration and Elections Committee

AN ACT CONCERNING THE DEADLINE FOR DEPOSITING POLITICAL CONTRIBUTIONS AND AUTHORIZING TOWN COMMITTEES TO CONTRIBUTE TO SCHOLARSHIPS

SUMMARY: This act increases, from seven to 14 days, the amount of time a campaign treasurer has after receiving a contribution to deposit it in his committee's designated depository. It also permits town committees to contribute to scholarships that high schools award based on objective criteria. The law already allows party committees, which include town committees, to make contributions to other committees, nonprofit charities, and memorial funds.

EFFECTIVE DATE: July 1, 2004

PA 04-113—sHB 5503

*Government Administration and Elections Committee
Planning and Development Committee*

AN ACT CONCERNING REGISTRARS OF VOTERS AND THE REPAIR OF VOTING MACHINES ON ELECTION DAY

SUMMARY: This act requires registrars of voters to perform certain tasks, including posting their hours and entering information on the statewide centralized voter registration system. It allows registrars to designate polling places outside the voting district, if necessary, and allows them to appoint assistants to serve at their pleasure. It requires voter registration agencies to record an applicant's party affiliation, if any, on his application receipt. Finally, the act permits repairs on a voting machine on Election Day only if the repair does not affect how votes already cast are recorded.

EFFECTIVE DATE: July 1, 2004, except for the requirement that voter registration agency receipts show the applicant's party affiliation, which takes effect January 1, 2005 and the provisions on voting machine repairs, which take effect upon passage.

REGISTRARS OF VOTERS

Registrars' Duties

The act requires registrars of voters to post their office hours in the town hall and post any change in these hours or the hours the statutes require them to be available for a specific day, at least 10 days before the change.

It requires registrars to enter voter information in the statewide centralized voter registration system that the secretary of the state maintains and keep voter information records for those on the active registry list in a fireproof cabinet in their offices. The act also modifies the requirement that registrars file voter registration records in the town clerk's office by making the filing in that office monthly and replacing the separate records with an updated list of the active voters in the town.

In towns with part-time registrars, the act requires registrars, rather than town clerks, to file voter information, just as full-time registrars do, in the registrars' office. With the elimination of this distinction, the act repeals an exemption for registrars who maintained voter records in their offices from the town clerk's office filing requirement. It removes an obsolete statutory reference to the space for "place of birth" on the voter registration application form.

Designation of Polling Places

The law allows a municipality's registrars to designate a polling place outside but adjacent to a voting district if they determine that no existing convenient or suitable polling place exists in the district. The place could be a separate room in an existing polling place. The act eliminates a requirement that the municipality's legislative body approve the room. Under the act, the designation remains in effect for future elections and primaries until the registrars file a document with the municipal clerk stating that the designation of a polling place in the adjacent district is no longer necessary.

Assistant Registrars

In addition to appointing the deputy registrar, prior law allowed registrars to appoint and employ up to four permanent assistants to assist them in performing their duties. The act instead allows them to appoint and employ up to four assistant registrars of voters, as needed, to serve at the registrar's pleasure. It also eliminates a provision allowing someone to serve as an assistant registrar if he served in that capacity for at least three years in another Connecticut municipality, regardless of where he lives. The law requires deputy

and special assistant registrars to be electors in the municipality in which they are appointed.

Ballot Placement

In the case of a town committee primary, prior law gave precedence for ballot placement (row order) to petitions for candidate slates filed after 9:00 a.m. on the first business day after petitions became available based on the order in which they were filed. The act conditions this precedence on candidates filing these petitions during the registrars' regular business hours or different hours as required by statute.

VOTER REGISTRATION AGENCY RECEIPTS

The act requires voter registration agencies (certain agencies, libraries, and other state offices where residents may register to vote) to record an applicant's party affiliation, if any, on the registration receipt required by law.

REPAIRS ON ELECTION DAY

The act prohibits any repairs to voting machines after votes have been cast unless the repair would not affect the way the machine records the votes already cast. By law, when a voting machine does not work on Election Day and a perfect machine cannot replace it, registrars must allow electors to vote using emergency paper ballots (absentee ballots) until at least one machine is repaired or replaced.

The law requires mechanics to file a written report detailing any repairs they make to a voting machine on Election Day and specifies its contents. The act requires mechanics to certify also that they did not make any repairs to the machine after any vote was cast on Election Day that would affect the way the machine recorded the votes.

PA 04-117—HB 5018

*Government Administration and Elections Committee
Education Committee
Appropriations Committee*

AN ACT CONCERNING THE PREPARATION OF MATERIALS FOR REFERENDA CALLED FOR BY A REGIONAL SCHOOL DISTRICT AND CONCERNING BUDGETS OF REGIONAL SCHOOL DISTRICTS

SUMMARY: When a regional school district's annual budget is not approved by a majority of the voters of its member towns before the beginning of the fiscal year, this act directs each member town's disbursing officer

to make reasonable expenditures to the district until the budget is approved. These expenditures must be equal to the town's total appropriation to the district for the previous fiscal year and its proportionate share in any increment in debt service over the previous fiscal year. The act requires each of the towns to receive credit for these expenditures once the new budget is approved.

The law allows any town, by vote of its legislative body, to authorize the printing and preparation of concise explanatory texts of local proposals or questions approved for submission to the town's electors at a referendum. The act allows the board of selectmen in a town whose legislative body is a town meeting to decide by majority vote whether to authorize dissemination of such text or other neutral printed material. For a regional school district referendum, the act requires (1) the regional board of education to authorize the preparation and printing of concise explanatory texts; (2) the regional board's secretary to prepare the texts, subject to approval by the board's counsel; and (3) the secretary to undertake all of the responsibilities for the questions, proposals, and texts that the law already specifies for town clerks in towns conducting referenda.

The act creates a statutory right to bring a complaint when anyone claims to have been aggrieved in connection with a referendum by (1) an election official's ruling, (2) a mistake in the vote count, or (3) a violation of prohibited acts concerning absentee voting. A person may file a complaint with any Superior Court judge following the act's procedures, which are similar to those available for contests and complaints in an election for public office.

EFFECTIVE DATE: July 1, 2004, except for the provision on preparing material for a regional school district referendum, which takes effect upon passage.

REFERENDUM COMPLAINT PROCEDURES

After filing the complaint with a judge, the complainant must send or deliver a copy of it to the State Elections Enforcement Commission (SEEC). When the complaint is filed before the referendum takes place, the judge must give the secretary of the state and SEEC notice of a hearing and render judgment expeditiously.

A complaint made after the referendum must be brought to a judge within 30 days after the referendum. The judge must order a hearing to take place from three to five days later, giving three to five days' notice to the election official who is the subject of the complaint, the secretary, SEEC, and any other affected parties.

If sufficient reason is shown at the hearing, the judge may order a recount. The judge has 10 days after the hearing to certify his ruling if he finds any error in an election official's ruling or mistake in the vote count. (If voting machines are used at a referendum, the

moderator locks and seals them when the count is completed. By law, they remain locked for 14 days unless the SEEC issues an order or there is a recanvass in case of a discrepancy, in which case they stay locked for a longer period. Under the act's provision allowing a complaint up to 30 days after a referendum, the machines may have already been unlocked and cleared by the time a complaint is filed.) The judge may order a new referendum or a change in the existing referendum schedule.

The judge's ruling is final and conclusive on questions relating to the complaint. The referendum returns must be corrected to conform to the ruling. But the act allows a party to appeal the ruling to the state Supreme Court. If a question of law is raised at the hearing that any party claims needs Supreme Court review, the judge must transmit it to the chief justice, who must call a special session of the Court to hear the question immediately.

If necessary, the Superior Court judge may issue a writ of mandamus to enforce his order and enter his finding and decree in the Superior Court records.

PA 04-141—sHB 5433

Government Administration and Elections Committee

Judiciary Committee

Legislative Management Committee

AN ACT REVISING PREQUALIFICATION REQUIREMENTS FOR STATE CONSTRUCTION CONTRACTS

SUMMARY: This act makes several changes to the laws governing public construction, including who may work on public construction projects, the requirements for obtaining this work, and reports and evaluations on the quality of the work. Most of these changes are to PA 03-215, which established new procedures for bidding on and awarding public construction contracts, most of which become effective on October 1, 2004. PA 03-215's prequalification provisions became effective on July 1, 2004 and its status report requirements were effective on January 1, 2004.

Specifically, the act:

1. expands the Department of Public Works (DPW) commissioner's and State Property Review Board's (SPRB) responsibilities regarding state agencies' office space needs;
2. makes changes to contractor prequalification laws, including requiring new information on prequalification applications, and adding new grounds for disqualification;
3. changes the process for awarding emergency, no-bid contracts beginning October 1, 2004;

4. increases the information that the DPW commissioner and each member of the construction awards panel must prepare on the selection process;
5. makes the contractor evaluations that each state agency must prepare after a construction project is completed available to all agencies for their use in assessing the contractor's fitness for future projects;
6. generally absolves from liability agencies and their employees who complete the evaluations;
7. delays for two years, from January 1, 2004 to January 1, 2006, awarding authorities' duty to complete status reports on construction projects;
8. eliminates a requirement for municipalities to complete the reports; and
9. requires DPW regulations to include objective criteria for evaluating contract proposals.

EFFECTIVE DATE: October 1, 2004

STATE AGENCY SPACE NEEDS

The act makes the DPW commissioner responsible for the sale or sublease of state agencies' office space. He is already responsible for purchasing, leasing, or acquiring state agencies' property and space. It requires the SPRB to review the commissioner's proposal to sell, lease, or sublease state property in the same way that it already reviews real estate acquisitions.

PREQUALIFICATION

Applications

The law requires contractors, but not subcontractors, to prequalify before bidding on any state or municipal construction contract valued at \$500,000 or more. To prequalify, they must submit an application, along with a nonrefundable fee, to the Department of Administrative Services (DAS) commissioner. The law requires the commissioner to adopt prequalification procedures and criteria in regulations.

The act sets October 1, 2005 as the deadline for the commissioner to adopt these regulations. It also requires the regulations to include "single-project limits," which are the highest estimated cost of a single project that an applicant is capable of undertaking.

It requires applicants for prequalification, in addition to their aggregate work capacity rating, to include the single-project limits that they are seeking. As they can with aggregate work capacity rating, the act allows a qualified contractor to apply for additional single-project limits at any time. "Aggregate work capacity rating" is the maximum amount of work a

contractor is capable of undertaking for any and all projects.

Prequalification Certificates

By law, the DAS commissioner can give an applicant that meets the prequalification requirements a one-year certificate that includes the types of work he can perform and the maximum amount of work he is capable of undertaking. The act requires the DAS commissioner to include the contractor's single-project limit on the certificate. It allows the commissioner to make the initial certificate effective for up to two years and requires the contractor receiving this extended certificate to pay the fee for a one-year certificate plus a prorated fee for the period over one year.

It allows the commissioner to send preliminary determinations on prequalification certificates by e-mail, instead of just by regular mail.

Disqualification

The act prohibits public officials from talking to bidders about a contract before it is awarded if the communication would result in the bidder receiving contract information not available to other bidders. Employees of construction contract awarding authorities are already prohibited from having these conversations.

The act disqualifies bidders who receive nonpublic information about a contract from state employees prior to the date it is advertised from bidding on the contract. These bidders are already disqualified if they receive this confidential information from public officials.

CONSTRUCTION ADVERTISING AND BID REQUIREMENTS

By law, authorities responsible for awarding most state contracts must do so on the basis of competitive bidding. Once the bids are in, the authority must award the contract to the lowest responsible qualified bidder who is prequalified by the DAS commissioner.

The act eliminates a requirement for agencies that award construction contracts to include in their ads for bids the aggregate work capacity rating required to do the job. The law still requires bidders to submit their prequalification certificate, which shows their aggregate work capacity rating, with each bid.

The act expands the information that bidders must report in the update statement they are required to submit with each bid to include changes in their qualification status.

CONTRACT SELECTION PROCESS

The act requires construction services award panels to rank, by qualification, the list of contractors it submits to the DPW commissioner for possible negotiations. It also increases the information that each panel must prepare on the selection process. In addition to how the evaluation criteria were used to determine the most qualified firms, the information must indicate how each panel member ranked each bidder. The ranking is available for public disclosure after the contract is executed.

The act requires each panel to prepare a memorandum on the selection process that includes each member's certification that his selection of the most qualified firm was free from collusion, gifts, compensation, fraud, or other inappropriate influences. It requires the commissioner to include in his memorandum on the process an explanation of his reasoning if he does not award a contract to the lowest responsible qualified contractor selected by the panel. The act requires him to make the same certification as panel members.

EMERGENCY NO-BID CONTRACTS

By law, the DPW commissioner can select and interview at least three responsible and qualified general contractors and negotiate with any one of them to complete any of seven special building projects: a community court, the Connecticut Juvenile Training School, a downtown Hartford higher education center, the University of Connecticut library, a correctional facility, a juvenile detention center, and Connecticut State University system student housing.

The act requires the commissioner to submit the names of three contractors to the construction services awards panel before entering a contract with any one of them or beginning work on the project. The panels select the contractors who can negotiate with the DPW commissioner to build, alter, or repair state buildings. The panel must select one contractor with whom the commissioner must negotiate the contract. (Under prior law, the commissioner selected the contractor with whom he would negotiate.) It requires the commissioner to submit the contract to the SPRB for approval or disapproval. If the board does not make a determination within 30 days after the submittal, the contract is deemed approved.

Beginning October 1, 2004, the act requires agencies seeking to award a contract without competitive bidding to certify to the Government Administration and Elections Committee, rather than the Legislative Management Committee, that an emergency exists that justifies an exception to the competitive bidding process. The entire legislature

must then vote on the contract. If the legislature approves it, the act requires the SPRB to review and approve or disapprove it within 30 days after the commissioner submits it. If the board does not make a determination within this time period, the contract is deemed approved.

CONTRACTOR EVALUATIONS

By law, each public agency, other than UConn, must complete and submit to DAS an evaluation of each contractor at the conclusion of his state-funded work on a building under the agency's control. The act additionally requires the agencies to compile evaluation information while the work is being done and use it to complete the evaluation form once the work is finished. It makes the evaluation information available to public agencies for assessing a contractor's "responsibility" during the bid selection and evaluation process.

The act requires each designated agency official to certify that the evaluation form completed at the end of a project is, to the best of his knowledge, a true and accurate analysis of the contractor's performance on the contract.

The act protects public agencies and their employees or certifying officials who complete the evaluation from any loss or injury it causes the contractor. The protection does not cover agencies, employees, or certifying officials who complete the evaluation in a willful, wanton, or reckless manner.

The act makes public agencies that fail to complete the evaluation within 70 days after the job is done ineligible for any state funds to build, remodel, repair, or demolish any public building or public works project until the evaluation is completed.

The law requires the DAS commissioner to adopt regulations establishing a standard contractor evaluation form. The act sets October 1, 2005 as the deadline for her to adopt these regulations.

STATUS REPORTS

By law, all awarding authorities, other than UConn, must report on any (1) ongoing building construction contract estimated to cost more than \$500,000 that will be paid, in whole or in part, with state funds or (2) DPW-awarded property management contract with an annual value of \$100,000 or more. The act delays for two years, until January 1, 2006, the duty of most awarding authorities to prepare and submit these annual status reports. It also eliminates a requirement for municipalities to complete the report.

PA 04-166—sSB 576

*Government Administration and Elections Committee
Human Services Committee*

AN ACT CONCERNING REGULATIONS BY THE DEPARTMENT OF SOCIAL SERVICES

SUMMARY: This act establishes a deadline and procedures for the Department of Social Services (DSS) to submit proposed regulations reflecting new policy changes to the Regulation Review Committee.

The act gives the department the option to adopt proposed regulations without notice or the opportunity for a hearing when the (1) proposal is to amend existing regulations; (2) amendment is necessary because of changes in state law; and (3) amendment directs, rather than allows, the department to act without exercising any discretion. These regulations must be submitted to the attorney general and the Regulation Review Committee in the form and manner prescribed by statute and filed with the secretary of the state once they approve them.

The act requires DSS to write any updates to state medical services or public assistance manuals in clear and concise language.

Lastly, it deletes obsolete language.

EFFECTIVE DATE: October 1, 2004

REGULATION DEADLINE AND PROCEDURE

By law, DSS must adopt, as regulations, any new policy it implements to conform to federal or joint federal and state law (e.g., Medicaid). The department can operate under the policy while adopting the regulations if notice of intent to adopt is placed in the *Connecticut Law Journal*.

The act requires the department to also adopt as regulations any new policy necessary to conform to any approved federal waiver application. The department may operate under this policy pending final adoption just as it can under any new Medicaid policy required by changes in the law.

Just as with other agencies required to adopt regulations, the act requires DSS to submit its proposed regulations to the Regulation Review Committee within 180 days of the date DSS publishes notice of its intent to adopt regulations. DSS must include with the regulations: (1) the date the proposed regulations became policy, (2) any provisions in the regulations that are no longer effective by the submittal date, and (3) a list of the policies that superseded any provisions in the proposed regulations.

If the department is unable to meet the proposed regulations deadline, the act requires it to give the Regulation Review Committee notice of that fact at least 35 days before the deadline. The department must

include in the notice the reasons why it cannot meet the deadline and the date by which it will submit the proposed regulations. The committee can require the department to appear to further explain its reason for an extension and answer policy questions. The committee may ask the Human Services Committee to review the department's policy, reasons for not submitting proposed regulations by the deadline, and proposed submittal date. The Human Services Committee may review this information, schedule a hearing on it, and make a recommendation to the Regulation Review Committee.

PA 04-171—sSB 584

Government Administration and Elections Committee

AN ACT CONCERNING THE DISCLOSURE OF VOICE MAILS UNDER THE FREEDOM OF INFORMATION ACT

SUMMARY: This act specifies that nothing in the Freedom of Information Act (FOIA) requires any public agency to transcribe or retain voice mail messages. The act covers voice transmissions made for the sole purpose of their electronic receipt, storage, and playback by a public agency.

With three exceptions, the act prohibits a public agency investigating an internal complaint of sexual harassment from disclosing identifying information, including name and address, regarding the complainant. The agency must disclose (1) the complainant's name to the accused during the investigation and (2) any information pursuant to a court order. It may disclose the complainant's name to people participating in the investigation. (PA 04-2, May Special Session, repeals this sexual harassment disclosure requirement.)

EFFECTIVE DATE: Upon passage

BACKGROUND

Voice-Mail Retention

In General Letter 98-1, the state public records administrator advised public agencies that voice mail is generally transitory and may be deleted at will. She suggested that voice mail containing potential evidence in a trial, such as a bomb threat, might require a longer retention period.

In 2002, the Freedom of Information Commission issued a proposed declaratory ruling (Draft Declaratory Ruling #94) that voice mail communications relating to the conduct of the public's business prepared, owned, used, received, or retained by a public agency are public records under FOIA. As such, the commission's proposal declared that these voice mail messages must

be retained. On April 28, 2004, the Freedom of Information Commission decided not to issue a declaratory ruling on the issues raised in the draft ruling.

PA 04-186—sHB 5648

Government Administration and Elections Committee

AN ACT CONCERNING THE CONVEYANCE OF CERTAIN PARCELS OF STATE LAND

SUMMARY: This act:

1. conveys parcels of state property to the (a) towns of Cheshire, Colchester, Enfield, Farmington, New Britain, New Canaan, Newtown, Norwalk, Old Saybrook, Plainfield, Trumbull, and Willington and (b) Human Resources Agency of New Britain; Nutmeg Housing Development Corporation; Area Waterbury Fire Chiefs Association; MBI, Inc.; and Colossale Construction Company;
2. requires the Department of Environmental Protection (DEP) commissioner to exchange with Voluntown two parcels of land located in the town and to charge the administrative costs to the town;
3. requires the state to release its rights with respect to a parcel the Department of Transportation (DOT) conveyed to Norwalk in 2000 for urban renewal, economic development, and housing purposes;
4. requires DOT to charge Anthony C. Barbino, to whom a 2003 special act conveyed a parcel of land in Bethlehem, for the administrative costs of the conveyance, instead of the parcel's fair market value;
5. sets out the boundaries and description of the Noank Aquaculture-Marine Laboratory, which a 2000 act required the agriculture commissioner to convey to Groton and which was described in the act by a reference to a deed located in the Groton land records;
6. designates the area known as the Quillinan watershed land in Ansonia and Seymour as the "John C. 'Skip' Hobson Watershed Land;"
7. requires the Commission on Arts, Tourism, Culture, History, and Film (CATCHF), in consultation with the Office of Policy and Management (OPM), to study the feasibility of creating a public-private partnership for the Old Newgate Prison and Copper Mine site in East Granby; and
8. specifies the circumstances under which the Department of Economic and Community Development (DECD) commissioner's determination that a municipality is severely

impacted by a prime defense cutback must remain effective until the property's conveyance and environmental remediation are complete, and allows him to renew the determination for up to two years.

The conveyances and property exchange are subject to SPRB approval. The sale of New Britain property to the Colossale Construction Company is for \$66,000 and the others are at a cost equal to the administrative cost of the conveyance, which the recipient pays.

The conveyed property reverts back to the state if the recipient does not use it for the stated purpose. With three exceptions, the conveyed property also reverts to the state if the town fails to retain ownership or leases it. Colchester and New Britain can lease, but not sell, the property. Newtown can lease its parcel from the Department of Agriculture to the Pootatuck Fish and Game Club for recreational purposes.

The act allows the Department of Mental Retardation (DMR) commissioner to enter into an agreement with PRA at Somerset, LLC, to build a residential board and care residence for six people with mental retardation in Glastonbury. It requires PRA at Somerset, Inc. to convey the land and residence to DMR upon the facility's completion, at which point DMR must convey to PRA at Somerset, Inc., a parcel of land less than one acre located at 2955 Main Street. This exchange is subject to review by the State Property Review Board (SPRB).

The act allows the town of Wallingford, with the DEP commissioner's approval, to convert certain land for use as a ball field. It specifies the information that the town must include in its application and certain requirements that must be met for DEP approval. Upon approval, a permanent conservation easement must be executed for the replacement land and the original easement modified to allow its use as a ball field.

EFFECTIVE DATE: Upon passage

DOT CONVEYANCES TO TOWNS

The act requires DOT to convey the following property located in the recipient town, for the purposes specified:

1. four parcels to Enfield for open space and municipal purposes (.207 acre, .234 acre, and two totaling 1.3 acres);
2. one parcel to Farmington for open space (5 acres);
3. one parcel to New Canaan for open space (6.78 acres);
4. two parcels to Old Saybrook for open space and recreational purposes (2.9 acres and 8.2 acres);
5. two parcels to Plainfield for open space and passive recreational purposes (139.2 acres total); and
6. one parcel to Trumbull for open space (15,144 square feet) and another parcel to Trumbull for open space and recreation (parcels near Route 25 that exceed DOT's needs).

DOT CONVEYANCES TO OTHER PARTIES

The act requires DOT to convey two parcels (.261 acre and .176 acre) in Norwalk to MBI, Inc. by quitclaim deed. It requires MBI, Inc. to convey the parcels to the Human Services Council, Inc. or to an entity that the council either controls or in which it has a direct or indirect ownership interest.

DOT must also convey to Colossale Construction Company a 1.15-acre parcel of land in New Britain for \$66,000. The company may use the parcel for residential purposes. If the company does not use it for residential purposes, the act requires the company to erect a stockade fence around the parcel's perimeter and abstain from developing, or using for commercial purposes, any part of it that is less than 100 feet from the abutting property to the south of the parcel.

OTHER DEPARTMENT CONVEYANCES

The act requires the following departments to convey state property:

1. Department of Motor Vehicles to New Britain for economic development purposes (1.22 acres);
2. DECD to Human Resources Agency of New Britain, Inc., property in New Britain for medical or open space purposes (.32 acre);
3. Department of Public Works to Newtown for municipal purposes (12 acres);
4. DECD to Nutmeg Housing Development Corporation, property in Colchester for affordable housing (5.72 acres);
5. Department of Agriculture to Newtown for open space and recreational purposes (23.25 acres);
6. Department of Correction to Area Waterbury Fire Chiefs Association, property in Cheshire for firefighting educational and training purposes (approximately 10 acres); and
7. DEP to Willington for recreational purposes (4.993 acres).

WALLINGFORD BALL FIELD

The act allows Wallingford, with the DEP commissioner's approval, to convert for use as a ball field some or all of the land it acquired under the

protected open space and watershed land acquisition grant or the Charter Oak open space grant program. It requires the town, as a condition of the conversion, to provide replacement land. The town's application for approval must include (1) evidence that alternative lands were considered and an explanation of why they were not acceptable, (2) appraisals acceptable to the commissioner for the protected open space and the replacement land, and (3) maps acceptable to the commissioner of the protected open space and replacement land. The act prohibits the commissioner from approving an application unless he determines the replacement land is of equal or greater monetary, recreational, and natural resource conservation value as the protected open space and was purchased to replace the ball field land. Upon the commissioner's approval, a permanent conservation easement must be executed for the replacement land and the conservation easement for the original protected land modified to allow its use as a ball field.

CATCHF FEASIBILITY STUDY

The act requires CATCHF, in consultation with OPM, to study the feasibility of creating a public-private partnership for the Old Newgate Prison and Copper Mine site in East Granby. The partnership would be between the state and a nonprofit organization dedicated to preserving the site. If the commission determines the partnership is feasible, the act requires the study to include an examination of (1) the partnership's structure, (2) the nonprofit organization's role in operating the site, and (3) how other states address public-private partnerships for similar attractions. The act requires the commission to report its findings and recommendations to the Commerce Committee by January 1, 2005.

MUNICIPALITIES SEVERELY IMPACTED BY PRIME DEFENSE CONTRACT CUTBACKS

By law, in order to determine that a municipality has been severely impacted by prime defense contract cutbacks, the DECD commissioner must find that (1) a business in the municipality had at least one prime defense contract cancelled or reduced, (2) the cutback has caused or will cause a loss of employment opportunities in the municipality, and (3) the cutback has caused or will cause a severe adverse impact in the municipality. If a U.S. Defense Department military installation that produced military vehicle engines is located in such a municipality, the installation is closed due to base closures or realignment under federal law, and the Defense Department plans to convey the installation site to the municipality, the act specifies that the commissioner's determination remains in effect until

the conveyance and any environmental remediation of the site are completed. It also allows the determination to be renewed for a period of up to two years.

By law, any municipality the commissioner declares to be severely impacted by a prime defense contract cutback is deemed a distressed municipality and becomes eligible for grants for non-defense-dependent development projects.

PA 04-198—sHB 5021

*Government Administration and Elections Committee
Judiciary Committee*

AN ACT CONCERNING LEGAL DEFENSE FUNDS ESTABLISHED BY OR ON BEHALF OF PUBLIC OFFICIALS OR STATE EMPLOYEES AND PENALTIES FOR INTENTIONAL VIOLATIONS OF THE STATE CODES OF ETHICS

SUMMARY: This act increases the penalty for certain intentional State Ethics Code violations. It makes a person who commits two or more violations or violations that provide him with a financial benefit of \$1,000 or more, guilty of a class D felony, rather than an unclassified misdemeanor (see Table on Penalties).

The act requires employees of the Connecticut Lottery Corporation to comply with the State Ethics Code, which primarily means they must adhere to employment and post-employment restrictions and gift bans currently applicable to most state officials and public employees.

It restricts contributions to legal defense funds for public officials and state employees established after the act's passage (June 3, 2004). It allows certain individuals to contribute up to \$1,000 per year to a public official's or state employee's legal defense fund. It prohibits the families of lobbyists and people doing business with the state from contributing to these funds, but it allows unlimited contributions from the official's or employee's relatives and from people whose relationship does not depend on the official's or employee's position.

The act requires officials and employees to submit to the State Ethics Commission quarterly reports on their legal defense fund's directors and officers, depository institution, contributions, contributors, and expenditures. And it gives the commission the same authority with respect to violations of the legal defense fund provisions that the law provides for violations of the Code of Ethics for Public Officials, including conducting investigations, determining violations, and imposing penalties.

EFFECTIVE DATE: Upon passage, except for the intentional code violation provisions, which are effective July 1, 2004.

LEGAL DEFENSE FUNDS DEFINED

The act defines a legal defense fund as a fund established to pay the legal expenses a public official or state employee incurs in defending himself in an administrative, civil, criminal, or constitutional proceeding on matters related to his service or employment with the state or a quasi-public agency.

CONTRIBUTIONS

In addition to the ethics code's existing gift restrictions for lobbyists and public officials, the act prohibits (1) a lobbyist or anyone acting on a lobbyist's behalf, (2) a person who does business or seeks to do business with a public official's or state employee's department or agency, or (3) a person whom the official's or employee's department or agency directly regulates, from soliciting a contribution to the official's or employee's legal defense fund. It also bars officials and employees from accepting, directly or indirectly, any contribution to their legal defense fund from (1) an immediate family member of such individuals or (2) a person the official or employee appoints to serve on a paid, full-time basis. It prohibits all of these individuals from making contributions to an official's or employee's legal defense fund.

The act allows unlimited contributions by a public official's or state employee's relatives and people whose relationship with him does not depend on his status as an official or employee. The factors that the Ethics Commission must consider in determining whether a relationship depends on an official's or employee's status include whether the person may be able to benefit from his exercise of official authority and whether the person made gifts to the official or employee before he began serving in that capacity.

The act allows officials and employees to accept contributions to their legal defense funds from anyone not prohibited from contributing, but limits these contributions to \$1,000 per person, per year. This limit does not apply in 2004 to anyone who made contributions of more than \$1,000 to a legal defense fund before the act took effect, so long as (1) the person makes no additional contributions in 2004 and (2) the fund accepts no further contributions from the person in 2004.

REPORTS

The act requires any public official or state employee who establishes a legal defense fund, or for whom a fund is established, to file a quarterly report on the fund with the commission by the 10th of January, April, July, and October. These reports must include the following information for the preceding calendar quarter: (1) the names of the fund's directors and officers; (2) the name of its depository institution; (3) an itemized accounting of each contribution to the fund, including each contributor's full name and address and the contribution amount; and (4) an itemized accounting of each fund expenditure, including each payee's full name and address and the expenditure's amount and purpose. The public official or state employee must sign each report under penalty of false statement. He is not required to report on people who made contributions to a fund before the act's passage.

VIOLATIONS

The act requires the commission to investigate and hold hearings on alleged violations of the act's legal defense fund provisions in the same manner as it already does for violations of the Code of Ethics. It also gives the commission the same authority to act on violations of the legal defense fund provisions that it already enjoys for code violations. And it imposes the same penalties for intentional violations of the legal defense fund provisions as the law imposes for intentional violations of the code of ethics.

PA 04-206—sSB 126

*Government Administration and Elections Committee
Judiciary Committee*

AN ACT PROVIDING NOTICE OF FREEDOM OF INFORMATION RELATED LITIGATION TO THE FREEDOM OF INFORMATION COMMISSION

SUMMARY: This act requires courts to order any party asserting a Freedom of Information Act (FOIA) violation or defense in any action to give the Freedom of Information Commission notice of the action and a copy of the complaint and all pleadings. The party may have the documents personally delivered or sent by first-class mail to the commission's office. The act also permits any court entering such an order to allow the commission, upon request, to intervene (join) in the action and participate in issues related to FOIA.

EFFECTIVE DATE: Upon passage

PA 04-219—sSB 478

*Government Administration and Elections Committee
Public Safety Committee*

**AN ACT ENHANCING THE PROTECTION AND
SECURITY OF THE CITIZENS OF
CONNECTICUT BY ESTABLISHING THE
DEPARTMENT OF EMERGENCY
MANAGEMENT AND HOMELAND SECURITY**

SUMMARY: This act eliminates the Office of Emergency Management (OEM), which serves as the state's civil defense organization. It instead creates the Department of Emergency Management and Homeland Security (DEMHS) within the Office of Policy and Management (OPM) for administrative purposes only.

A commissioner heads the new department. The governor appoints him with the advice and consent of the legislature to serve a term of up to four years. The act transfers to the department the functions, powers, duties, and necessary personnel of OEM and the Division of Homeland Security within the Department of Public Safety. It makes corresponding changes to replace statutory references to OEM or its director with DEMHS or its commissioner. The act transfers the OEM director's authority to represent the state in civil preparedness matters to the DEMHS commissioner or his designee.

The commissioner must, in consultation with the state police bargaining unit, enter into an interagency memorandum of understanding with the Public Safety and Military departments for (1) the assignment and retrenchment rights of state police and military department employees and (2) interagency information sharing.

The act establishes a 24-member statewide advisory council to advise OEM; the Department of Public Safety; and, beginning January 1, 2005, DEMHS.

By January 1, 2005, the act requires the OPM secretary to give the Appropriations and Public Safety committees a report on the reorganization of state emergency management and homeland security. The report must, at a minimum, describe (1) how DEMHS is organized, including the organization of any internal divisions; (2) the transfer of state agency personnel or budgeted funds; and (3) any necessary federal, state, or local interagency procedures, agreements, or protocols.

Beginning January 1, 2006 and annually thereafter, the act requires the DEMHS commissioner to give the Public Safety Committee a report that specifies and evaluates statewide emergency management and homeland security activities during the preceding calendar year.

EFFECTIVE DATE: January 1, 2005, except for the provisions establishing the statewide advisory council

and the OPM report on reorganization, which are effective upon passage.

**COMMISSIONER OF THE DEPARTMENT OF
EMERGENCY MANAGEMENT AND HOMELAND
SECURITY**

Qualifications

The act requires the commissioner to have at least five years of public safety, security, emergency services, and emergency response managerial or strategic planning experience.

It makes a person ineligible to serve as commissioner if (1) he has a record of criminal, unlawful, or unethical conduct or (2) his past or present political activities or financial interests might substantially conflict with the duties of the commissioner, expose him to undue influence, or compromise his ability to be entrusted with necessary state or federal security clearances or information.

Duties

The commissioner has the same powers of other department heads, including the power to organize his agency, designate a deputy, and adopt regulations. He specifically has all of the powers and duties formerly exercised by the directors of OEM and the Division of Homeland Security.

Organization and Personnel. Like the OEM director, the commissioner must organize the department and its personnel to effectively discharge emergency management, civil preparedness, and homeland security missions. The organization must reasonably conform to applicable Federal Emergency Management Agency laws and regulations. The commissioner may remove personnel for security reasons or incompetence, subject to reinstatement by the Employees' Review Board.

The act makes the commissioner the department's chief administrative officer, responsible for providing a coordinated, integrated program for statewide emergency management and homeland security. It permits him to do all things necessary to apply, qualify for, and accept, federal civil defense or homeland security funds.

Local Emergency Relief. The act requires the commissioner, rather than the OPM secretary, to serve as chair of the Local Emergency Relief Advisory Committee. The committee gives grants to towns for local emergency response activities or to match federal disaster assistance.

The act makes the commissioner responsible for:

1. coordinating with state and local government agencies and private-sector groups to ensure

- that they receive adequate planning, equipment, training, and exercises regarding homeland security;
2. coordinating and, where necessary, consolidating all homeland security communications and communication systems in the state, including those in the local government and the private sector;
 3. distributing or coordinating the distribution of information and security warnings throughout the state; and
 4. establishing standards and security protocols for the use of any intelligence information.

The act specifies that municipal and regional agencies are not required to agree to the reallocation of any federal or state emergency management or homeland security funds for which they may be eligible.

Offender Tracking. The act requires the commissioner or his designee to serve on the Criminal Justice Information System Governing Board, which oversees the offender-based tracking system.

Regulations. The act gives the commissioner the authority to adopt regulations. He, instead of the adjutant general and OEM director, respectively, may make, order, or adopt regulations as necessary to develop and implement the civil preparedness plan and program.

The act eliminates a requirement that orders or regulations filed with the secretary of the state include a statement of the considerations made during their development. It also eliminates the requirement that the commissioner get the approval of the governor and a majority of the Legislative Management Committee to give effect to orders or regulations that the attorney general finds in conflict with the law. Instead, the regulations or orders have the force and effect of law when they are made or adopted under the Uniform Administrative Procedure Act.

HOMELAND SECURITY ADVISORY COUNCIL

Duties

The act establishes a 24-member statewide Emergency Management and Homeland Security Coordinating Council to advise OEM; the Department of Public Safety; and, beginning January 1, 2005, DEMHS on:

1. applying for and distributing federal or state funds for emergency management and homeland security;
2. planning, designing, implementing, and coordinating statewide emergency response systems;

3. assessing the state's overall emergency management and homeland security preparedness, policies, and communications;
4. strategies to improve emergency response and incident management, including training and exercises, volunteer management, communications and use of technology, intelligence gathering, compilation and dissemination, the development, coordination and implementation of state and federally required emergency response plans, and the assessment of the state's use of regional management structures; and
5. strengthening consultation, planning, cooperation and communication among federal, state and local governments, the Connecticut National Guard, police, fire, emergency medical and other first responders, emergency managers, public health officials, private industry, and community organizations.

The council must advise the governor and the legislature on its findings and efforts to secure the state from all disasters and emergencies and to enhance the protection of state citizens.

Membership

The members must consist of the following officials or their designees:

1. Emergency Management and Homeland Security, Public Safety, Public Health, Mental Health and Addiction Services, Environmental Protection, Public Works, and Transportation commissioners;
2. OPM secretary;
3. Military Department's adjutant general;
4. Department of Public Utility Control's chairperson;
5. Department of Information Technology's chief information officer; and
6. state fire administrator.

By July 1, 2004, the members must also include the people listed in Table 1.

Table 1: Emergency Management and Homeland Security Coordinating Council

<i>Members</i>	<i>Appointing Authorities</i>
One emergency medical services professional and one manager or coordinator of 9-1-1 public safety answering points	Governor

Two municipal police chiefs	One each appointed by the governor and the House speaker
Two municipal fire chiefs	One each appointed by the governor and the Senate president pro tempore
One local or regional health director	Senate president pro tempore
One representative of the Connecticut Conference of Municipalities	Senate majority leader
One volunteer fire chief	Senate minority leader
One local or regional civil preparedness director	House speaker
One nonprofit hospital administrator	House majority leader
One representative of the Council of Small Towns	House minority leader

Each member serves uncompensated for three years, beginning July 1, 2004, or until a qualified successor is appointed. The person making the initial appointment must fill any vacancies within 30 days.

The OPM secretary or his designee, who must be an OPM employee, must chair the council until January 1, 2005. On and after that date, the DEMHS commissioner must serve as chair. The chair may ask other federal, state, regional, or local government agencies to participate in the council as nonvoting members for purposes of consultation, planning, and communication.

The council must hold its first meeting by August 1, 2004 and must meet monthly thereafter. It must submit a report to the legislature by January 1, 2005 and annually thereafter.

PA 04-245—sHB 5025

*Government Administration and Elections Committee
Judiciary Committee*

AN ACT STRENGTHENING ETHICS LAWS CONCERNING FINANCIAL DISCLOSURE, GIFTS AND STATE CONTRACTORS

SUMMARY: This act requires state and quasi-public agencies to get written documentation that the process for awarding a large state contract did not involve collusion or gift giving before the contract is executed. A large state contract is a building construction,

procurement, or service contract; lease; or licensing agreement valued at over \$500,000 in a calendar or fiscal year. With one exception, “gift” has the same meaning that it has in the State Ethics Code, which is generally anything of value given for less than its value. Unlike the code, the act counts as a gift anything of value given at a major life event, such as a wedding.

The act requires the State Ethics Commission to (1) develop a plain language summary of state ethics laws of concern to people or businesses that submit bids or proposals for state contracts and (2) publish it on the commission’s website.

The act broadens the information public officials provide in their annual statement of financial interest to the State Ethics Commission to include business affiliations between a business with which they are associated and others.

With a number of exceptions, the law prohibits public officials and state employees from knowingly accepting gifts from anyone they know or have reason to know is doing business with, or engaged in activities directly regulated by, their department or agency. It also prohibits the parties from giving these gifts. The act eliminates the exception for gifts given at major life events, thus making such gifts a violation. Beginning October 1, 2004, it applies the prohibition to prequalified state contractors doing or seeking to do business with the state.

EFFECTIVE DATE: Upon passage, except the provisions on financial statements and prequalified contractors are effective October 1, 2004.

CONTRACT AFFIDAVIT AND CERTIFICATION REQUIREMENTS

Between June 1, 2004 and June 30, 2006, the act prohibits state and quasi-public agencies from executing large state contracts unless they receive an affidavit from people or businesses bidding on or awarded state contracts and a certification from the official or employee of the awarding agency responsible for executing it. The affidavit requirement does not apply to municipal officials or employees.

Beginning July 1, 2006, the person authorized to execute a large state contract for a state or quasi-public agency and the contract recipient must make a certification on the selection process and the promise or presentation of gifts. Each agency must include in the bid specifications or request for proposal for a large state contract (1) the date contract planning began and (2) a notice of the certification requirements.

The quasi-public agencies the act covers are: the Connecticut Development, Connecticut Health and Education Facilities, Connecticut Higher Education Supplemental Loan, Connecticut Housing Finance, Connecticut Housing, Connecticut Resources Recovery,

Lower Fairfield County Convention Center, and Capital City Economic Development authorities; Connecticut Hazardous Waste Management Service; and Connecticut Innovations, Incorporated.

Each person signing an affidavit or certification does so under penalty of false statement and swears that the information he provides is true to the best of his knowledge and belief.

Bidder or Proposer Affidavits

Between June 1, 2004 and June 30, 2006, each bidder or proposer must submit an affidavit with each bid or proposal on a large state contract. He must attest whether he or any officer, director, shareholder, member, partner, or managerial employee of his business or their agent (hereafter “bidder”) who participated substantially in preparing the bid or proposal gave a gift during the two years preceding the bid or proposal to any official or employee (1) who participated substantially in preparing the bid or proposal for the soliciting agency or (2) of any other agency that supervises or makes appointments to the soliciting agency.

The affidavit must also attest that the bidder has no knowledge of any action it has taken to circumvent the affidavit requirement by getting anyone else to give a gift to an official or employee of the soliciting agency. “Substantial participation” is direct, extensive, and substantive, not peripheral, clerical, or ministerial.

A bidder or proposer who does not submit the affidavit must be disqualified. If he is the lowest responsible qualified bidder or the highest ranked proposer, the agency or quasi-public agency must award the contract to the next lowest bidder or ranked proposer or seek a new bid or proposal. However, between July 1, 2004 and June 30, 2006, a bidder that submits an affidavit to the attorney general in accordance with policy he adopted on January 8, 2004 is deemed to have complied with the act’s affidavit requirement.

Affidavits From People or Businesses Awarded Contracts or Leases

Once a large state contract is executed the contract recipient must submit an affidavit. It must attest to whether gifts were provided between the date the bidder affidavit was signed and the date the contract was executed to the officials or employees of the (1) soliciting agency who participated substantially in bid or proposal preparations or negotiating or awarding the contract or (2) agency with supervisory or appointing authority over the soliciting agency.

Certification from Awarding Authorities

The official or employee of the awarding agency responsible for executing the contract must certify that the selection process was devoid of collusion, gift giving (both received and promised), compensation, fraud, and inappropriate influence.

Duty When Gifts Given

If any gift was given in any of the above-described situations, the affidavit must include the recipient’s name and describe the gift, its value, and the approximate date it was given.

Certifications from Contract Awarding Authorities and Recipients Beginning July 1, 2006

The person authorized to execute a large state contract for a state or quasi-public agency must certify that the selection process was devoid of collusion, gifts (either promised or received), compensation, fraud, or inappropriate influence.

The contract recipient must certify that no gifts were given between the date the agency began planning the contract and the date it was executed by the person, business, or any officer, director, shareholder, member, partner, and managerial employee of his business or their agent who participated substantially in preparing the bid or contract proposal or negotiating the contract to (1) any public official or state employee who participated substantially in preparing the bid or request for proposal or negotiating or awarding the contract or (2) any official or employee of any agency that supervises or makes appointments to the contracting agency.

The recipient must also certify that its principals, key personnel, or agents did not know of any action by the business to circumvent the gift prohibition by getting anyone else to give a gift to an official or employee of the awarding agency. Lastly, the recipient must certify that its proposal was without fraud or collusion.

The act requires a bidder or proposer who does not make the certification to be disqualified, even though it requires contract recipients and not bidders to make a certification. If he is the lowest responsible qualified bidder or the highest ranked proposer, the agency or quasi-public agency must award the contract to the next lowest bidder or ranked proposer or seek a new bid or proposal.

STATEMENT OF FINANCIAL INTEREST

The act requires public officials to include additional information in the annual statements of financial interest they file with the State Ethics Commission. They must describe any business affiliation between a business associated with the official and (1) a lobbyist; (2) a person the official knows or has reason to know is doing, or seeking to do, business with the state; (3) a person engaged in

activities regulated by the official's department or agency; or (4) the lobbyist's or other person's associated business. By law, an official is associated with a business if he or his spouse or dependent child owns it or one of them works for it; serves as officer, director, or compensated agent; or owns at least 5% of the stock in any class.

HIGHER EDUCATION AND EMPLOYMENT ADVANCEMENT COMMITTEE

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PA 04-75—sHB 5507

*Higher Education and Employment Advancement Committee
Education Committee*

AN ACT CONCERNING TEACHER EDUCATION PROGRAMS AT INSTITUTIONS OF HIGHER EDUCATION

SUMMARY: This act requires that, beginning July 1, 2006, the curriculum of any teacher preparation program leading to professional certification include instruction in literacy skills and processes that reflects current research and best practices in the field. The instruction must be incorporated into the requirements for a student major and concentration.

EFFECTIVE DATE: July 1, 2004

PA 04-196—sSB 515

*Higher Education and Employment Advancement Committee
Public Health Committee
Labor and Public Employees Committee
Appropriations Committee*

AN ACT ADDRESSING THE NURSING SHORTAGE

SUMMARY: This act establishes a Connecticut nursing faculty incentive program to be administered by the Office of Workforce Competitiveness (OWC). The program must provide grants, within available appropriations, to higher education institutions that work with hospitals to:

1. establish or expand nursing education programs that qualify people to teach or train nursing students enrolled in a bachelor's or registered nurse certification program or
2. encourage those who already have those qualifications to serve as full- or part-time faculty members at these institutions.

OWC must submit a status report on the program to the Education, Public Health, and Higher Education and Employment Advancement committees by January 1, 2006.

The act also requires the higher education commissioner to report to the Public Health and Higher Education and Employment Advancement committees, by January 5, 2005, on her department's assessment of the current and future capacity of the state higher education system to educate and train nurses. For each higher education institution, the assessment must include the (1) number of qualified faculty, (2) capacity for nursing students, (3) number of nursing students admitted, and (4) number graduating with a nursing degree. It must also examine any barrier to graduation nursing students face.

EFFECTIVE DATE: Upon passage

BACKGROUND

Office of Workforce Competitiveness

OWC is the governor's principal workforce development policy advisor. It (1) acts as a liaison between the governor and other government entities for workforce development matters, (2) coordinates the state's implementation of the 1998 federal Workforce Investment Act and establishes related methods and procedures, and (3) coordinates state agencies' workforce development activities.

PA 04-212—sSB 517

*Higher Education and Employment Advancement Committee
Labor and Public Employees Committee
Education Committee
Appropriations Committee
Government Administration and Elections Committee*

AN ACT CONCERNING WORKFORCE DEVELOPMENT

SUMMARY: This act requires the Office of Workforce Competitiveness (OWC) to establish a competitive innovation challenge grant program and expands OWC's duties. OWC must establish the program within available appropriations and in consultation with the Council of Advisors on Strategies for the Knowledge Economy, which the act creates.

The act requires the education commissioner, by January 1, 2005, in collaboration with OWC, the higher education commissioner, and the Community-Technical College (CTC) System chancellor, to report to OWC, the Governor's Council on Economic Competitiveness and Technology, and the Connecticut Employment and Training Commission (CETC) on certain initiatives involving CTCs and vocational-technical (V-T) schools.

The act requires that, by October 1, 2005, OWC, in consultation with the V-T school system superintendent, create an integrated system of statewide industry advisory committees for each career cluster the V-T school and CTC systems offer. The committees must include industry representatives of the specific career cluster. Each committee must establish, as part of the school's core curriculum, specific skill standards, corresponding curriculum, and a career ladder for the cluster. The committees must do this with support from OWC, the V-T and CTC systems, and the Education Department,

The act expands the duties of the Department of Social Services (DSS) pertaining to its mandate to develop a statewide child day care training system.

The act also makes a technical change involving V-T schools.

EFFECTIVE DATE: July 1, 2005 for the challenge grant program and knowledge council; July 1, 2004 for OWC's new duties; October 1, 2004 for the DSS child day care training system; and upon passage for the other provisions.

CHALLENGE GRANT PROGRAM

The program must encourage partnerships and collaboration between technology-based businesses and industry and higher education institutions and V-T schools to (1) develop educational programs in emerging interdisciplinary technology fields and (2) address related issues.

KNOWLEDGE ECONOMY COUNCIL DUTIES AND COMPOSITION

The nine-member council must (1) advise OWC on the process for awarding challenge grants to public postsecondary schools and their business partners, (2) promote university-industry partnerships, and (3) identify benchmarks for technology-based workforce innovation and competitiveness.

The council's chairman is the OWC director. The other members are the Office of Policy and Management (OPM) secretary; the commissioners of Economic and Community Development, Higher Education, and Labor; and four representatives from the technology industry, one each appointed by the Senate president pro tempore, House speaker, and Senate and House minority leaders.

OWC'S NEW DUTIES

The act expands OWC's duties, requiring it to coordinate the development and implementation of strategies for technology-based talent and innovation among state and quasi-public agencies. This includes creating a centralized clearinghouse and technical assistance function at the state level to help applicants develop small business innovation research programs in conformity with the federal small business innovation research program and other proposals. The act makes OWC the lead state agency for developing employment and training strategies and initiatives required to support Connecticut's position in the knowledge economy.

INITIATIVE REPORT

The education commissioner's report must address:

1. initiatives to build upon the existing partnership of the V-T school and CTC systems in providing an integrated system of

secondary and postsecondary education for V-T school students pursuing careers in workforce shortage areas;

2. initiatives to encourage and facilitate matriculation of V-T school graduates at regional CTCs; and
3. recommendations for continually improving articulation agreements between V-T schools and CTCs and implementing new agreements between them, particularly in workforce shortage areas.

DSS' DUTIES

Prior law required DSS to develop and implement a statewide coordinated child day care system. The act broadens the mandate, instead requiring the development of a child day care and early education training system. It adds the Higher Education Department to the following entities and agencies from which DSS must get help to implement and develop the system: the Child Day Care Council and the departments of Public Health, Social Services, Education, Children and Families, Consumer Protection, and Economic and Community Development.

The act requires DSS, within available appropriations, to make available to people who provide child day care services in child day care centers, group day care homes, and family day care homes (1) scholarship assistance; (2) career counseling and training; (3) career ladder advancement through seamless articulation of levels of training; (4) program accreditation support; and (5) other initiatives recommended by the Social Services, Education, and Higher Education departments.

BACKGROUND

Office of Workforce Competitiveness

OWC is within OPM for administrative purposes. It is the governor's principal workforce development policy advisor, acting as a liaison between the governor and government entities for workforce development matters. It coordinates (1) the state's implementation of the 1998 federal Workforce Investment Act and (2) state agencies' workforce development activities.

By law, the office must forecast workforce shortages in occupations in the state and recommend (1) ways to generate enough workers to meet identified workforce needs and (2) methods that industry and secondary and higher education may use to address these needs.

Connecticut Employment and Training Commission

By law, CETC fulfills, among others, the roles of state job training coordinating council and state human resource investment council according to federal requirements. It also evaluates the effectiveness of state employment and training programs and develops plans and recommendations to avoid duplication of effort and improve delivery of relevant services.

Federal Small Business Innovation Research Program

This program makes awards to small businesses involved in research and development. Federal agencies with extramural research and development budgets over \$100 million annually set aside 2.5% for small companies to conduct innovative research or research and development that have potential for commercialization. The agency granting the award must determine the scientific and technical merit and feasibility of the proposal and consider its commercial potential (15 USC § 638, as amended).

Related Act

PA 04-253 (1) requires OWC to establish a challenge grant program for regional workforce development boards for FY 2004-05 and (2) establishes a nursing incentive program, which the higher Education Department must administer.

PA 04-220—sSB 519

*Higher Education and Employment Advancement Committee
Public Health Committee
Education Committee
Legislative Management Committee
Government Administration and Elections Committee*

AN ACT CONCERNING ALLIED HEALTH WORKFORCE NEEDS

SUMMARY: This act establishes a 17-member Connecticut Allied Health Workforce Policy Board to work with the Connecticut Career Ladder Advisory Committee and specifies its responsibilities. The board must report its findings and recommendations, including recommendations for legislation to address allied health workforce shortages in Connecticut, to the Public Health and Higher Education and Employment Advancement committees by January 1, 2006 and annually afterwards.

EFFECTIVE DATE: October 1, 2004

POLICY BOARD*Functions*

The board must:

1. monitor data and trends in the allied health workforce, including (a) the state's current and future supply and demand for allied health professionals and (b) the public higher education system's current and future capacity to train and educate students pursuing allied health professions;
2. recommend ways to form and promote economic clusters for these professions;
3. identify recruitment and retention strategies for (a) allied health employers and (b) public and independent higher education institutions that have allied health programs;
4. recommend ways to enhance the professions' attractiveness and promote diversity in the allied health workforce, including racial, ethnic, and gender diversity;
5. recommend financial and other assistance for students enrolled, or thinking of enrolling, in allied health programs offered by public or independent higher education institutions;
6. recommend ways to recruit and use retired nursing faculty members to teach or train students to become licensed practical or registered nurses; and
7. examine nursing programs at public and independent higher education institutions and recommend ways to streamline the programs' curricula to facilitate timely program completion.

Membership

The board consists of:

1. the Education, Higher Education, and Public Health commissioners;
2. the chairmen and ranking members of the Public Health and Higher Education and Employment Advancement committees or their designees;
3. one representative of the Connecticut State Board of Examiners for Nursing, appointed by the board;
4. one representative of the Connecticut Conference of Independent Colleges, appointed by the conference; and
5. one member each, appointed by the House speaker, Senate president pro tempore, and House and Senate minority leaders.

Appointed members must be experts in finance, economics, allied health, or health facility management. The deadline for making appointments is October 31, 2004.

The board must convene its first meeting by November 30, 2004. It must select a member as chairman.

Members are not compensated but are reimbursed, within available appropriations, for necessary expenses incurred performing their duties. They serve three-year terms. Appointing authorities must fill vacancies.

ALLIED HEALTH WORKFORCE AND ALLIED HEALTH PROFESSIONALS

The act defines “allied health workforce” and “allied health professionals” as professionals or paraprofessionals qualified by special training, education, skills, and experience in providing health care, treatment, and diagnostic services under the supervision of or in collaboration with a licensed practitioner. They include physician assistants; registered nurses; licensed practical nurses; certified nurse assistants; home health aides; and qualified radiologists, technologists, therapists, and technicians.

BACKGROUND

Connecticut Career Advisory Committee

PA 03-142 requires the Office of Workforce Competitiveness (OWC) to establish this committee to promote new, and enhance existing, career ladder programs for occupations in the state with a projected worker shortage, based on the office’s forecast. It defines “career ladder” as any continuum of education and training that leads to a credential, certificate, license, or degree and results in career advancement or the potential to earn higher wages in an occupation with a projected workforce shortage forecasted by OWC.

Related Acts

PA 04-196 establishes a Connecticut nursing faculty incentive program to provide grants, within available appropriations, to higher education institutions that work with hospitals to (1) establish or expand nursing programs that qualify people to teach or train students enrolled in a bachelor’s or registered nurse certification program or (2) encourage those already qualified to serve as full- or part-time faculty at higher education institutions.

PA 04-253 establishes a nursing incentive program administered by the Higher Education Department.

PA 04-227—sHB 5438

*Higher Education and Employment Advancement Committee
Education Committee
Appropriations Committee*

AN ACT CONCERNING ENGLISH AS A SECOND LANGUAGE INSTRUCTION AND IN-SERVICE TRAINING FOR TEACHERS AND TEACHER PREPARATION COURSES

SUMMARY: This act requires local and regional school boards to include information on second language acquisition in their in-service training programs for certified teachers, administrators, and pupil personnel in districts required to provide bilingual education for English language learners.

The act requires that, beginning July 1, 2006, the curriculum for any teacher preparation program leading to professional certification include instruction in the concepts of second language learning and acquisition and processes that reflects current research and best practices in second language learning and acquisition. The instruction must be incorporated in student major and concentration requirements.

The act also requires state agencies providing or helping to provide job training to include, within available appropriations, the opportunity for English as a second language instruction.

EFFECTIVE DATE: July 1, 2004

PA 04-253—sHB 5571

*Higher Education and Employment Advancement Committee
Labor and Public Employees Committee
Appropriations Committee
Public Health Committee*

AN ACT ADDRESSING THE NURSING SHORTAGE AND ESTABLISHING A CHALLENGE GRANT FOR REGIONAL WORKFORCE DEVELOPMENT BOARDS

SUMMARY: This act establishes a Connecticut nursing incentive program, which the Higher Education Department (DHE) must administer. It appropriates \$200,000 to DHE for the program in FY 2004-05 and allows DHE to use up to 2% for program administration in FYs 2004-05 and 2005-06.

The act also requires the Office of Workforce Competitiveness (OWC) to establish a challenge grant program for regional workforce development boards for FY 2004-05 and appropriates \$200,000 for this purpose. EFFECTIVE DATE: Upon passage, except for the establishment of the OWC challenge grant program, which takes effect July 1, 2004.

NURSING INCENTIVE PROGRAM

The act requires DHE to provide financial assistance to up to four regional community-technical colleges that enter into partnerships with hospitals or other health care institutions to secure non-state funding to increase the number of faculty qualified to teach or train students to become registered nurses. A college seeking assistance must submit to DHE its nursing faculty expansion plan, a commitment agreement signed by its hospital or health care institution partners, and information on the amount of non-state funding the partnership secured. DHE may provide assistance to a college for up to two years, but it cannot provide more than \$75,000 per year or the amount of private funding secured by the partnership, whichever is less. In determining whether to provide assistance for a second year, DHE must consider the success of the nursing faculty expansion plan, as measured by such factors as the number of people teaching or training nursing students in the expansion program and the number of students graduating from nursing programs.

CHALLENGE GRANT PROGRAM

The purpose of this program is to (1) expand educational programs to provide low-wage, low-skilled workers with skill assessment and life management support and (2) provide training in high-growth, workforce-shortage areas such as health care and information technology. OWC must provide assistance to any regional workforce development board that raises money from private sources and commits to using it to expand an existing job training academy to meet these goals. The amount of assistance must be equal to the amount the board raised from private sources, but OWC cannot give more than \$500,000 to all the boards.

BACKGROUND

Office of Workforce Competitiveness

OWC is the governor's principal workforce development policy advisor, acting as a liaison between him and other government entities for workforce development matters. It coordinates the state's implementation of the 1998 federal Workforce Investment Act and state agencies' workforce development activities.

By law, OWC must forecast workforce shortages in occupations in the state and recommend (1) ways to generate enough workers to meet identified workforce needs, including scholarship, school-to-career, and internship programs, and (2) methods industry and secondary and higher education may use to address these needs.

Related Acts

PA 04-196 establishes a Connecticut nursing faculty incentive program to provide grants, within available appropriations, to higher education institutions that work with hospitals to (1) establish or expand nursing programs that qualify people to teach or train students enrolled in a bachelor's or registered nurse certification programs or (2) encourage those already qualified to serve as full- or part-time faculty at higher education institutions.

PA 04-212 requires the OWC to establish a competitive innovation challenge grant program to encourage partnerships and collaboration between technology-based businesses and industry and higher education institutions and V-T schools to develop educational programs in emerging interdisciplinary technology fields and address related issues.

PA 04-119—sHB 5184

Select Committee on Housing

Planning and Development Committee

Judiciary Committee

**AN ACT CONCERNING NONDISCLOSURE OF
PRIVATE TENANT INFORMATION IN A SALE
OF PUBLIC HOUSING TO A PRIVATE ENTITY**

SUMMARY: This act prohibits any entity that buys from a housing authority all or a portion of a housing project from publicly disclosing a project tenant's Social Security or bank account number contained in the lease agreement. It also prohibits a housing authority from disclosing a tenant's Social Security or bank account number to anyone, except the purchaser of a housing project that the authority owns, without the tenant's permission. Under the act, violators can be fined up to \$200.

EFFECTIVE DATE: Upon passage

PA 04-6—sHB 5041

*Human Services Committee
Appropriations Committee*

**AN ACT CONCERNING THE USE OF
MEDICARE PRESCRIPTION DRUG DISCOUNT
CARDS IN THE CONNPACE PROGRAM**

SUMMARY: This act requires certain low-income participants in the Connecticut Pharmaceutical Assistance Contract to the Elderly and Disabled (ConnPACE) program to participate in the first stage of new federal Medicare prescription drug benefits (drug discount cards) as a condition of ConnPACE eligibility. The act combines ConnPACE and discount card benefits for this group and requires participants to pay the discount card or ConnPACE copay, whichever is lower. It also allows the Department of Social Services (DSS) commissioner to require higher-income ConnPACE participants to do the same under certain conditions (but the commissioner has not required this).

The act also places obligations on pharmacies participating in ConnPACE and makes a number of other statutory changes related to the discount card. Finally, it makes minor and technical changes to update the ConnPACE statutes.

EFFECTIVE DATE: Upon passage

**CONNPACE CHANGES RELATED TO FEDERAL
DRUG DISCOUNT CARD**

A new federal law (P.L. 108-173) establishes a voluntary prescription drug benefit for Medicare beneficiaries (seniors age 65 and over and younger disabled people) in two stages: drug discount cards starting in June 2004 offered by private entities such as health insurers, retail pharmacies, pharmaceutical companies, or other organizations, followed by a more comprehensive permanent prescription drug program in January 2006. The cards' benefits, formularies, and discounts can vary and people can choose which card they want. There will be no asset test for the cards and the annual enrollment fee must be no more than \$30.

In the first stage, the drug discount cards provide federal "transitional assistance" in the form of a \$600 annual credit on the card for participants with annual household incomes at or below 135% of the federal poverty level (FPL), i.e., \$12,569 for one person and \$16,862 for two in 2004. This group must pay coinsurance of 5% if their income is at or below 100% of FPL and 10% if it is between 100% and 135% of FPL until they use up their \$600 credit. Unused credit amounts carry over from the first to the second year. The federal government also pays the enrollment fee for this group. Medicare beneficiaries who also receive full Medicaid benefits that cover prescriptions are not

eligible for the cards; their Medicaid prescription coverage continues until they receive new federal benefits in 2006.

This act makes a number of changes in ConnPACE to conform to this first stage of the new federal program.

*Requirement for Certain Low-Income ConnPACE
Participants to Obtain Discount Card*

The act requires an otherwise ConnPACE-eligible resident who is also eligible for Medicare and has income at or below 135% of the FPL (the group that is eligible for the \$600 subsidy) to obtain an endorsed Medicare prescription discount card designated by the DSS commissioner in order to participate in ConnPACE.

Copayments

For this low-income group, the act makes the discount card beneficiary responsible for payment of any coinsurance requirements under the card, as long as these are not more than the ConnPACE copays (currently a maximum of \$16.25 per prescription). If they are more, the act requires DSS to pay the pharmacy to cover costs above the ConnPACE copay amounts. If the prescription's cost is more than the remaining available annual credit, the act relieves the beneficiary of responsibility for any payment above the ConnPACE copay and requires DSS to pay the pharmacy the excess costs.

*Commissioner's Option to Require Discount Card for
Higher-Income ConnPACE Participants*

The act also allows the commissioner, at her discretion, to require ConnPACE participants with incomes above 135% of FPL to obtain one of the commissioner-designated discount cards if she determines this is cost-effective for the state. (This group is not eligible for the \$600 federal credit.) In that event, the commissioner may pay for the annual enrollment fees, projected to be up to \$30 per person. (However, in practice DSS has decided not to require this group to obtain a discount card, on the basis that it is not cost-effective for the state.)

Eligibility Adjustments

The law generally bars people insured under a policy that provides full or partial coverage for prescription drugs (once a deductible has been met) from participation in ConnPACE, but it allows people who exhaust their other insurance benefits during the year to sign up for ConnPACE. This act also exempts

from the prohibition people who sign up for the new two-year temporary Medicare prescription drug discount cards, if they otherwise qualify for ConnPACE.

The law also already allows people who are insured for prescription drugs but expect to exhaust their coverage soon to apply for ConnPACE before they run out of coverage and have their participation take effect when the other coverage runs out. The act also applies this principle to the discount cards.

Pharmacies' Obligations

The act requires pharmacies, in order to participate in the ConnPACE program, to accept all Medicare-approved discount cards that the commissioner has designated for use in conjunction with the ConnPACE program. It also allows the commissioner to require a participating pharmacy to accept any Medicare-endorsed discount card required under federal law.

The act requires the pharmacy to make reasonable efforts to determine whether the client is entitled to the \$600 annual credit.

Implementation and Regulations

The act allows the commissioner to implement the policies and procedures needed to carry out these provisions while still in the process of adopting them in regulation form, as long as she publishes notice of intent to adopt the regulations not later than 20 days after the implementation. The policies and procedures will be valid until the final regulations are adopted.

OTHER CHANGES

The act updates the statutes to reflect the current ConnPACE income limits (\$20,800 for single people and \$28,100 for married couples), already in regulation and adjusted annually. It also eliminates statutory references to potentially higher ConnPACE income limits if the federal government approves a pending Medicaid waiver Connecticut submitted several years ago, before the new Medicare drug benefits.

BACKGROUND

ConnPACE

The ConnPACE program helps low-income seniors over age 65 and younger disabled people, who are not poor enough for Medicaid, pay for prescription drugs. It requires participants to pay a \$16.25 per-prescription copayment and a \$30 annual registration fee. To be eligible, applicants must generally have no other prescription drug insurance or have exhausted it. They

must have an annual income of less than \$20,800 if they are single or a combined income under \$28,100 if married. These income limits are adjusted for inflation every January.

Related Acts

PA 04-101 requires the low-income ConnPACE participants to reapply annually for a Medicare discount card and lets DSS enroll them if they do not choose one. It also requires DSS to evaluate and report on the feasibility of drug reimportations from Canada for the ConnPACE program.

PA 04-104 allows ConnPACE participants to obtain replacements up to twice a year for lost or stolen prescription drugs and exempts them from the \$16.25 copay.

PA 04-258 repeals the ConnPACE asset test and estate recovery provisions enacted in 2003. It and PA 04-2, May Special Session, make changes regarding the preferred drug list for ConnPACE and other state pharmacy programs.

PA 04-12—HB 5198

Human Services Committee

Public Health Committee

AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES

SUMMARY: This act changes how the commissioner of the Department of Mental Retardation (DMR) reports, and the Office of Protection and Advocacy for Persons with Disabilities (OPA) investigates, deaths of DMR clients to which abuse or neglect could have contributed.

By executive order, the DMR commissioner must report to OPA all deaths of anyone placed or treated under his direction, regardless of whether abuse or neglect may have contributed. (The order does not establish a deadline for these reports.) Under prior law, OPA had to investigate whenever a DMR client between the ages of 18 and 59 died and abuse or neglect was "alleged." (The law did not specify who was making the allegation.) The act establishes a 24-hour deadline for the DMR commissioner to report to OPA, appears to change the standard that requires OPA to investigate from "alleged" abuse or neglect to "reasonable cause to suspect" abuse or neglect, and requires the investigations into deaths of individuals aged 60 and older.

Also, the act shortens, from five calendar days to 72 hours, the time within which mandated reporters of any suspected cases of abuse or neglect of persons with

mental retardation must report to OPA. And it adds licensed professional counselors to the list of reporters.

Finally, the act makes technical changes.

EFFECTIVE DATE: October 1, 2004

DMR CLIENT DEATHS

The act codifies an executive order requirement that the DMR commissioner report to OPA deaths of people placed or treated under the commissioner's direction. But it establishes a narrower statutory standard for when the commissioner must report. Specifically, it directs him, when he determines that there is "reasonable cause to suspect or believe" that the death of a DMR client was due to abuse or neglect, to notify the OPA director within 24 hours. (Presumably, because of the executive order, DMR would continue to report all deaths to OPA, including those for which abuse or neglect is not suspected.)

Once the director gets the report he must conduct an investigation. The executive order specifies no time frame for reporting. And prior law required OPA to investigate whenever a death occurred and there were "allegations" that it was due to abuse or neglect. (By law, the OPA mandated reporters must report to OPA when they have reasonable cause to suspect or believe abuse or neglect occurred.)

Under the act, OPA must investigate deaths of clients over the age of 18. Previously, it investigated deaths only of individuals between the ages of 18 and 59. All other OPA abuse or neglect investigations (i.e., those for which there is no death) continue for clients in the narrower age group.

The Department of Social Services' (DSS) Elderly Protective Services unit is charged with investigating alleged abuse and neglect of citizens aged 60 and over. It is not clear whether that department will continue to investigate in these circumstances. The Department of Children and Families investigates suspected abuse and neglect of children.

TIME FRAME FOR REPORTING SUSPECTED ABUSE OR NEGLECT OF INDIVIDUALS WITH MENTAL RETARDATION

The act requires certain individuals (e.g., doctors, clergy) to report to OPA as soon as practicable, but no later than 72 hours after they have reasonable cause to suspect or believe that a person with mental retardation between the ages of 18 and 59 has been abused or neglected. Under prior law, these individuals had to report to OPA within five calendar days of their first reasonable suspicion.

BACKGROUND

Executive Order 25, PA 03-146, and DMR Client Deaths

In February 2002, Governor Rowland issued Executive Order No. 25, largely in response to a number of untimely deaths of DMR clients living in community living arrangements. The order required DMR to report to OPA all deaths of persons it placed or treated under the commissioner's direction, regardless of whether abuse or neglect was suspected. It also established an Independent Mortality Review Board to review the medical care and other circumstances surrounding these deaths when either the DMR commissioner or OPA director believed the deaths were caused by abuse or neglect, or by its own review. Finally, it created a Fatality Review Board for Persons with Disabilities to investigate deaths that, in the OPA director's opinion, warranted a full and independent investigation.

PA 03-146, the result of a Legislative Program Review and Investigations Committee study, built on the executive order, creating additional requirements for the DMR commissioner when deaths of people for whom DMR had direct or oversight responsibility for medical care occurred. It also directed the OPA director, when allegations were made that the deaths could have been due to abuse or neglect, to determine whether such abuse or neglect occurred, unless a court ordered otherwise. The law did not require DMR to report directly to OPA these deaths, but Executive Order 25 did. (It would presumably be these reports that would prompt an OPA investigation.)

PA 04-16—sSB 414

Human Services Committee

AN ACT CONCERNING TECHNICAL REVISIONS TO THE HUMAN SERVICES STATUTES

SUMMARY: Under current practice, when indigent people die and do not have enough money to pay for a funeral, the Department of Social Services (DSS) commissioner pays up to \$1,200 for the funeral. The act conforms the statute to this practice by shifting the statutory responsibility to pay the funeral home, cemetery, or crematorium, as the case may be, from the chief executive officer of the town where the person died to the DSS commissioner.

It also makes technical changes in the statutes governing the Board of Education and Services for the Blind, Temporary Family Assistance, State-Administered General Assistance, Medicaid, HUSKY, the statewide dental plan, long-term care facility rates,

ConnPACE, the child care subsidy program, nursing homes, offsets for child support arrearage from lottery winnings, and community health center grants.
EFFECTIVE DATE: October 1, 2004

PA 04-63—HB 5196

Human Services Committee

Appropriations Committee

Labor and Public Employees Committee

AN ACT CONCERNING ASSIGNMENT OF STATE EMPLOYEES TO THE OFFICE OF THE COURT MONITOR FOR THE DEPARTMENT OF CHILDREN AND FAMILIES

SUMMARY: The law authorizes the administrative services commissioner to establish procedures for assigning permanent executive branch employees to a federal agency, municipality, or public or private college or university while keeping the full salary, benefits, and rights and privileges of their job class or position. This act extends this assignment procedure to employees assigned to the Office of the Court Monitor that was established at the Department of Children and Families (DCF) under the *Juan F.* consent decree.

The act permits assigning employees to the court monitor through December 31, 2006. The law permits assigning employees to the other agencies and institutions for up to two years and renewing the assignments for another two years.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Juan F. Decree and Stipulation

An October 2003 stipulation to the 1991 *Juan F.* consent decree established a three-person transition task force to assume all decision-making authority affecting abused, neglected, or abandoned children in DCF care or custody or reported to DCF as being at risk of abuse, neglect, or abandonment (the *Juan F.* class). The stipulation requires the monitor to establish an exit plan with which the state must comply to end the federal court's jurisdiction. That plan ends on November 1, 2006 unless the state fails to comply. The task force is composed of the monitor appointed by the U.S. District Court., the DCF commissioner, and the Office of Policy and Management secretary.

PA 04-73—sHB 5483

Human Services Committee

AN ACT CONCERNING TRANSITIONARY RENTAL ASSISTANCE

SUMMARY: This act expands the circumstances under which families can receive rent subsidies from the Department of Social Services' (DSS) Transitional Rental Assistance Program (T-RAP). Under prior law, families in which an individual was working and had income exceeding the Temporary Family Assistance (TFA) benefit who exhausted their time-limited TFA benefits (generally \$543 per month for a family of three living in most parts of the state) could get these subsidies. The act continues to permit subsidies for families in which an individual is working and has income above the TFA benefit when the family leaves the TFA program, but also makes them eligible when they still have unused months of TFA available. And it permits subsidies to families who leave TFA regardless of income, if an individual in the family is working when the family leaves and the individual is working at least 12 hours per week.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

T-RAP

The T-RAP program provides up to 12 months of rental assistance to families who meet its eligibility criteria and live in private housing. DSS pays the subsidies from its available appropriations.

TFA Time Limits and Extensions

Families who are not exempt from the program's time limits can receive TFA benefits for 21 months, or more if they qualify for extensions when they have made a good faith effort to comply with the TFA program requirements but despite such efforts, earn less than the TFA payment. Families can also qualify for these extensions if circumstances beyond their control, such as domestic violence, have prevented employment. Additional extensions beyond the two are available in more limited circumstances.

PA 04-76—sHB 5508*Human Services Committee***AN ACT CONCERNING REVISIONS TO THE GENERAL STATUTES NECESSITATED BY THE ELIMINATION OF THE GENERAL ASSISTANCE PROGRAM**

SUMMARY: This act makes numerous technical changes related to replacing town general assistance with the State-Administered General Assistance (SAGA) program. It also repeals related obsolete and duplicative statutes. In some instances, the act removes references to town GA but does not replace them with SAGA references, although the Department of Social Services (DSS) may apply that program's policy, as it has been doing generally since SAGA replaced town GA in 1998. It is not clear what the legal effect of this will be, if any.

EFFECTIVE DATE: October 1, 2004

BACKGROUND*SAGA and PA 03-3, June 30 Special Session*

In 1997, the legislature directed DSS to take over administration of the general assistance (GA) program from the 169 towns that ran the program with state reimbursement for their costs. In 1998, DSS took over all town programs, except Norwich's. (Towns had the ability to petition DSS to continue their programs and only Norwich chose to do so.) The legislature did not change the statutes to eliminate references to town GA, nor did it pass legislation to make it clear that references to town GA also applied to SAGA. But DSS adopted SAGA regulations, which essentially do just that.

PA 03-3, June 30 Special Session, eliminated state reimbursement to towns for any GA medical assistance expenses incurred after September 30, 2003, and any cash assistance benefits or program administrative costs incurred after February 29, 2004. DSS officially took over Norwich's program on March 1, 2004.

PA 04-90—sSB 322*Human Services Committee**Government Administration and Elections Committee***AN ACT CONCERNING THE BOARD OF EDUCATION AND SERVICES FOR THE BLIND**

SUMMARY: By law, the Board of Education and Services for the Blind (BESB) consists of the commissioner of social services and six state residents the governor appoints. The act requires at least two of the appointees to be blind and one the parent of a child who receives BESB services. Under prior law, two of the appointees had to be blind.

The act also (1) adds two members, one each appointed by the House and Senate majority leaders, to the 14-member BESB monitoring council; (2) extends the deadline for the council to meet and report to the legislature on BESB's progress from February 1, 2004 to February 1, 2005; and (3) extends the council's sunset date from July 1, 2004 to July 1, 2005.

EFFECTIVE DATE: Upon passage for the monitoring council provisions and October 1, 2004 for the changes in the board's composition.

BACKGROUND*BESB Monitoring Council*

PA 03-217 established a BESB monitoring council. Among other things, the council, which meets monthly, must monitor BESB's fiscal accountability and the quality, efficiency, and equity of BESB's provision of (1) educational services for children, (2) home and daily living skills services, (3) vocational rehabilitation, and (4) outreach to potential elderly clients. It must also develop recommendations for proposed changes in BESB's organizational structure.

PA 04-10—SB 482*Insurance and Real Estate Committee***AN ACT IMPLEMENTING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO CERTAIN INSURANCE STATUTES****SUMMARY:** This act makes technical and conforming revisions in the insurance statutes.

EFFECTIVE DATE: October 1, 2004

PA 04-17—SB 109*Insurance and Real Estate Committee***AN ACT CONCERNING THE CONNECTICUT LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT****SUMMARY:** This act increases the coverage maximum under the Connecticut Life and Health Insurance Guaranty Association (1) from \$300,000 to \$500,000 for life insurance death benefits and (2) from \$100,000 to \$500,000 for net cash surrender and net cash withdrawal values for life insurance and annuities. The coverage maximum for health insurance is already \$500,000.

The act also eliminates the Class A \$150-per-calendar-year “member insurer” cap on non-pro-rata assessments. Class A assessments, which are collected to cover the association’s administrative costs and general expenses, can be collected on a pro-rata (proportionate) or non-pro-rata basis. A “member insurer” (1) is any insurer licensed or holding a certificate of authority in Connecticut to issue life and health insurance; (2) does not include a health maintenance organization; and (3) may include an insurer whose license has been suspended, revoked, or voluntarily withdrawn.

EFFECTIVE DATE: October 1, 2004

BACKGROUND*Life and Health Insurance Guaranty*

The Connecticut Life and Health Insurance Guaranty Association protects policyholders, certificate holders, and beneficiaries when a life and health insurance company becomes financially impaired or insolvent. The association pays valid life, health, and annuity claims up to the applicable policy coverage limit or the state law dollar limit, whichever is less. The association covers those who (1) were insured by a Connecticut-licensed company and (2) at the time of the declared impairment or insolvency, were Connecticut

residents. The association assesses Connecticut-licensed insurers in the same line of coverage as the impaired company to raise funds needed to pay claims, administrative costs, and other association expenses. The association does not cover health maintenance organizations, fraternal benefit societies, unauthorized insurers, self-funded plans, and insurers not licensed to sell life and health insurance in Connecticut.

PA 04-24—sSB 484*Insurance and Real Estate Committee***AN ACT CONCERNING CORPORATE-OWNED LIFE INSURANCE****SUMMARY:** This act permits an employer or a trustee of a trust, other than a voluntary employees’ beneficiary association (VEBA), to purchase life insurance on employees or retirees for whom it provides life, health, disability, retirement, or similar benefits. By law, a VEBA trust can already purchase such insurance.

The act requires an employer or trustee to obtain the employee’s or retiree’s consent before buying the insurance. The consent must include an acknowledgment that the insurance can remain in force after the person’s employment ends.

The act (1) prohibits retaliation against any person who does not consent; (2) requires the amount of life insurance coverage taken out on non-key or non-managerial employees to be reasonably related to the amount of benefits provided to the employees in the aggregate; and (3) requires that when life insurance is purchased to finance an employee benefit plan, it can only be purchased on the lives of employees and retirees who are eligible to participate in the benefit plan at the time their lives are first insured. “Non-key or non-managerial employees” are employees who are not management, administrative, or professional.

The act applies to policies and contracts delivered or issued for delivery in Connecticut.

EFFECTIVE DATE: October 1, 2004

BACKGROUND*Corporate-Owned Life Insurance*

A business entity has an insurable interest in the lives of its officers, managers, and key employees because it reasonably expects to benefit from their lives and suffer a loss if they die. Corporate-owned life insurance (COLI) is life insurance that an employer buys covering one or more employees. The employer is the applicant, owner, premium payer, and beneficiary of the policy. A variation of COLI is trust-owned life insurance (TOLI), where a trust, typically a VEBA trust

established under the Internal Revenue Code, purchases the insurance. COLI and TOLI plans have become a way of financing employee welfare benefit plans. For example, the life insurance cash values and death benefits can be used to pay health care premiums.

PA 04-34—HB 5464

*Insurance and Real Estate Committee
Appropriations Committee*

**AN ACT CONCERNING HEALTH INSURANCE
COVERAGE FOR WIGS FOR CHEMOTHERAPY
PATIENTS**

SUMMARY: This act requires health insurance policies to provide at least \$350 of coverage per year for a wig prescribed by a licensed oncologist for a patient who suffers hair loss because of chemotherapy. It applies to individual and group health insurance policies delivered or issued for delivery in Connecticut that cover (1) basic hospital expenses, (2) basic medical-surgical expenses, (3) major medical expenses, (4) limited benefit expenses (individual policies only), or (5) hospital or medical services.

EFFECTIVE DATE: October 1, 2004

PA 04-39—SB 481

Insurance and Real Estate Committee

**AN ACT CONCERNING THE DISCLOSURE OF
NONMATERIAL FACTS CONCERNING REAL
PROPERTY**

SUMMARY: This act prohibits lawsuits against a real estate owner, his agent, or any agent of the transferee for failing to disclose a nonmaterial fact concerning real property to the transferee. The act defines a “nonmaterial fact concerning real property” as a fact, set of facts, or circumstance surrounding real estate, which includes the fact that: (1) an occupant is or has been infected with a disease on the list of reportable diseases issued by the public health commissioner pursuant to law or (2) the property was at any time suspected to have been the site of a death or felony.

The act specifies that a nonmaterial fact concerning real property is not a material fact that must be disclosed in a real estate transaction. It eliminates a similar provision specifying that the existence of any fact or circumstance that may have a psychological impact on a purchaser or lessee is not a material fact that must be disclosed in a real estate transaction.

The act also eliminates the definition of “psychologically impacted,” which means the effect of

certain circumstances surrounding real estate that include the fact that: (1) an occupant of real property is, was, or was at any time suspected to be infected with human immunodeficiency syndrome (HIV) or (2) the property was at any time suspected to have been the site of a homicide, other felony, or a suicide. Finally, the act eliminates the prohibition against suing a real estate owner, his agent, or any agent of the transferee for failing to disclose to the transferee that the property was psychologically impacted.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Request for Custom Written Disclosures

By law, if a purchaser or lessee of real estate in the process of making a bona fide offer advises an owner or his agent in writing that it is important to his decision to purchase or lease the property whether the property was at any time suspected to have been the site of a homicide, other felony, or suicide, then the owner through his or her agent must disclose such information to the purchaser or lessee in writing, subject to and consistent with applicable laws of privacy. If the owner refuses to disclose such information, his agent must advise the purchaser or lessee in writing (CGS § 20-329ee).

Reportable Diseases

The public health commissioner must issue an annual list of reportable diseases. The list includes “category 1” and “category 2” diseases. A category 1 disease (e.g., tuberculosis, anthrax, smallpox) must be reported by telephone immediately upon recognition or strong suspicion. A category 2 disease (e.g., AIDS, gonorrhea, Lyme disease) must be reported by mail to DPH and local health departments within 12 hours of recognition or strong suspicion.

PA 04-49—SB 112

*Insurance and Real Estate Committee
Public Health Committee*

**AN ACT CONCERNING STATUTES
APPLICABLE TO HEALTH CARE CENTERS
AND THE ISSUANCE OF STOP LOSS POLICIES**

SUMMARY: This act prohibits stop-loss policies from being issued or delivered in Connecticut unless a copy of the policy is first submitted to the Insurance Department for review and approval. It authorizes the department to issue regulations defining a stop-loss

policy and setting the applicable filing and review standards.

The act also requires that HMO plans delivered, issued for delivery, or renewed in Connecticut covering FDA-approved prescription drugs for cancer treatment also cover “off-label use” of those drugs. “Off-label use” means that the drugs are used to treat a type of cancer not included in the medication’s labeling.

EFFECTIVE DATE: October 1, 2004

OFF-LABEL CANCER DRUGS

In order to be covered, the drug must be recognized for treatment of the specific cancer for which it is prescribed in one of the following reference sources: (1) U.S. Pharmacopoeia Drug Information Guide for the Health Care Professional, (2) the American Medical Association’s Drug Evaluations, or (3) the American Society of Hospital Pharmacist’s American Hospital Formulary Service Drug Information.

The act does not require coverage of any experimental or investigational drug or any drug that the FDA has determined is contraindicated for treatment of the specific cancer for which it has been prescribed. It specifies that the off-label use provision does not affect authority to reimburse for drugs used in treating any other disease or condition.

BACKGROUND

Stop-Loss

A stop-loss policy is also known as an excess reimbursement or excess coverage policy. It insures the plan issuer, which is usually an employer operating a self-insured benefit plan in accordance with the Employee Retirement Income Security Act of 1974 (ERISA). The policy is intended to protect the employer from catastrophic claims. Payment under the stop-loss policy is made to the plan, rather than to individual employees, for incurred claims. The policy sets a specific aggregate amount required to trigger the stop-loss coverage. The aggregate amount cannot be so low as to make payment by the stop-loss insurer an actuarial certainty.

In the past, the Insurance Department has permitted health insurers to issue stop-loss policies. It issued Bulletins that required insurers to file the policy forms with the department for a determination that the coverage is actually stop-loss and not a high-deductible plan or reinsurance. The department has considered stop-loss policies to be subject to the same mandated benefits and provisions that are applicable to accident and health forms. Once the trigger point is reached, the stop-loss policy automatically includes the accident and health mandates.

PA 04-77—HB 5548

Insurance and Real Estate Committee

AN ACT CONCERNING RESIDUAL PAYMENTS MADE TO HEIRS AND ASSIGNEES OF INSURANCE PRODUCERS AND WAIVER OF CERTAIN PRODUCER EXAMINATION REQUIREMENTS

SUMMARY: This act allows insurance renewal or deferred commissions to be paid to a producer’s heir or assignee, if the producer sold, solicited, or negotiated insurance in Connecticut while appropriately licensed. Under prior law, only the producer could collect a renewal or deferred commission.

The act also authorizes the insurance commissioner to waive pre-licensing examination requirements for (1) property and casualty insurance producers who hold the professional designation of chartered property and casualty underwriter (CPCU) and (2) life and accident insurance producers who hold the professional designation of chartered life underwriter (CLU). CPCU and CLU designation requirements typically include (1) at least eight semester-long courses and an exam for each, (2) 36-months of industry experience, and (3) an ethics component.

EFFECTIVE DATE: October 1, 2004

PA 04-83—HB 5550

Insurance and Real Estate Committee

AN ACT CONCERNING COMMERCIAL BROKERAGE AGREEMENTS WITH OUT-OF-STATE BROKERS AND SALESPERSONS

SUMMARY: This act allows real estate brokers and salespersons licensed by another state, but not in Connecticut, to handle in-state commercial real estate transactions under certain conditions.

An out-of-state real estate broker must (1) comply with Connecticut’s real estate laws; (2) affiliate, and have a written agreement, with a Connecticut-licensed broker; (3) give the Connecticut broker a copy of his out-of-state broker license; and (4) handle all money related to the commercial real estate transaction according to Connecticut law or as specified in the written agreement with the Connecticut broker. The affiliated broker agreement must include (1) the terms of cooperation, (2) compensation for the Connecticut broker, and (3) a statement that the out-of-state broker will comply with state laws.

An out-of-state salesperson must (1) comply with Connecticut real estate laws, (2) work under the direct supervision of an out-of-state broker who meets the above requirements, and (3) give the Connecticut broker

a copy of his out-of-state salesperson license. When the other state makes no distinction between licenses for broker or salesperson, the out-of-state person must meet the requirements for an out-of-state broker.

The act requires the out-of-state broker or salesperson to include the affiliated Connecticut broker's name in any sales advertisements for Connecticut commercial real estate. It also prohibits the out-of-state broker or salesperson from touring Connecticut commercial real estate with a prospective buyer.

EFFECTIVE DATE: October 1, 2004

PA 04-98—SB 485

*Insurance and Real Estate Committee
Finance, Revenue and Bonding Committee*

AN ACT ESTABLISHING FLEXIBLE HEALTH CARE SPENDING ACCOUNTS FOR STATE EMPLOYEES

SUMMARY: Beginning July 1, 2004, this act requires the comptroller to maintain a flexible health care spending account program for state employees, including legislators, in accordance with federal Internal Revenue Code (IRC) rules. Upon an employee's written request, the comptroller or program administrator must establish a flexible spending account for the employee. The comptroller must (1) reduce the employee's salary by the amount specified in the request, (2) transfer that amount to the employee's account, and (3) use the account to reimburse the employee for medical care expenses not covered by health insurance. The act authorizes the comptroller to contract with a program administrator.

The act requires the comptroller or program administrator to hold flexible health care spending account funds, which must (1) be separately accounted for, (2) remain the employer's property, (3) be maintained in accordance with and used to reimburse employee medical care expenses as permitted by federal tax laws. The act specifies that retirement plan contributions for Tier 1 and hazardous duty employees will be based on the employee's salary minus the amount deposited into a flexible health care spending account. (See Background regarding Tier 2 and Tier 2A employees.)

EFFECTIVE DATE: July 1, 2004

Collective Bargaining Agreements

The act does not preempt any collective bargaining agreement in effect on its effective date. By law, when the statutes conflict with existing state employee collective bargaining agreement provisions governing

benefits and health insurance, the agreement prevails. The act's provisions affect agreements negotiated after July 1, 2004.

BACKGROUND

Flexible Health Care Spending Accounts

The federal IRC authorizes flexible spending accounts (FSAs) for health care expense reimbursement. IRC authorizes employers to offer employees a choice between cash (i.e., salary) and certain "qualified" nontaxable benefits. It also allows employees to take a salary reduction to contribute to benefit costs. Contributions to a FSA must be used in the year in which they are made. This is the "use-it-or-lose-it" rule whereby benefits must be used within the plan year. Unused amounts are forfeited at the end of the plan year. A qualified benefit is one that does not defer compensation and is excluded from an employee's gross income, such as FSAs, among others. Because it is excluded from income, it is not subject to federal or state income tax. As a result, the employer's federal and state tax liability decreases. To avoid a constructive receipt of income, which makes the account funds taxable, the plan must offer employees an election opportunity, and participants must elect the amounts of FSA contribution before the beginning of the plan year (IRC § 125 and § 105).

FSA funds can be used to reimburse specified, incurred expenses. A health care FSA reimburses medical expenses incurred by the employee or his dependents during the plan year (i.e., based on date of service) that are not covered by health insurance. Reimbursement is permitted for medical care, which means amounts paid for the diagnosis, treatment, or prevention of disease or affecting the structure or function of the body; essential medical care transportation; medical insurance premiums; certain long-term care premiums and services; certain lodging away from home due to essential medical care provided by a physician in a licensed hospital; prescription drugs; physician expenses; and cosmetic surgery necessary to correct a deformity caused by a congenital abnormality, accidental injury, or disfiguring disease (IRC §213).

Tier 2 and Tier 2A Retirement Plans

The comptroller will administer the health care FSA program for all state employees, including Tier 2 and Tier 2A. Employees in Tier 2 do not make retirement plan contributions. Employees in tier 2A do, but the provisions regarding the contributions are contained in contracts, not the statutes. For any Tier 2A employee that elects a salary reduction for the purpose of establishing a health care FSA, retirement plan

contributions will be based on salary minus the amount deposited into the FSA.

PA 04-108—sSB 479

*Insurance and Real Estate Committee
General Law Committee*

**AN ACT CONCERNING PROPERTY CASUALTY
INSURANCE LOSS CONTAINMENT**

SUMMARY: This act requires a person who will perform repair or remediation work relating to a claim under a personal or commercial risk insurance policy to give the insured, before any work begins, written notice of the work to be completed and the estimated total price. It excludes from the notice requirement repairs that are (1) made to cars covered by an automobile liability policy or (2) performed in accordance with applicable law by registered home improvement contractors. The act defines remediation as including cleaning services.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Home Improvement Contractors

Home improvement contractors must comply with the Connecticut Home Improvement Act, which defines a “contractor” as a person who owns and operates a home improvement business or undertakes, offers to undertake, or agrees to perform any home improvement. “Contractor” does not include a person for whom the total cash price of all of his customers’ home improvement contracts does not exceed \$1,000 during any 12 consecutive months. Contractors must register with the consumer protection commissioner. Home improvement contracts must be in writing.

PA 04-125—HB 5467

Insurance and Real Estate Committee

**AN ACT REQUIRING DISCLOSURE OF
REIMBURSEMENT UNDER DENTAL PLANS
AND REVISING THE MANAGED CARE ACT TO
REFERENCE PROFESSIONAL COUNSELORS**

SUMMARY: This act requires an insurance company, upon request from an insured or a licensed dentist acting on an insured’s behalf, to disclose the estimated policy reimbursement for specific dental procedure codes ordered or recommended by a dentist. Actual reimbursement may differ from the estimate based on factors such as eligibility, plan design, utilization of

benefits, and the actual claim submitted for reimbursement. This requirement applies to policies delivered, issued for delivery, renewed, amended, or continued on or after October 1, 2004 that cover inpatient or outpatient dental services only.

The act also adds professional counselors to the definition of a “provider” under the managed care statutes. Thus, managed care organizations (MCOs) must, among other things, include professional counselors in provider lists issued to enrollees, give them 60 days prior notice of contract termination, and permit counselors to tell enrollees how the MCO compensates them.

EFFECTIVE DATE: October 1, 2004

PA 04-131—SB 486

*Insurance and Real Estate Committee
Judiciary Committee*

**AN ACT CONCERNING REAL ESTATE
BROKER LIENS**

SUMMARY: This act allows either a real estate broker or his authorized agent, instead of just the broker, to sign a claim for lien. By law, a claim for lien must include the claimant’s name, the property owner’s name, a property description, the lien amount, and the broker’s real estate license number. The lien amount is the commission or compensation owed to the broker.

Existing law prohibits a broker from claiming a lien unless written notice of the lien is given to the property owner and the prospective buyer or tenant at least three days before the property conveyance or the date the tenant is to move in. The act permits the broker to claim a lien if he is unable to give the notice to the prospective buyer or tenant because, after due diligence and reasonable effort, he cannot learn his identity.

The act also makes technical corrections to the broker lien statutes.

EFFECTIVE DATE: October 1, 2004

PA 04-140—HB 5200

Insurance and Real Estate Committee

**AN ACT CONCERNING TERRORISM
COVERAGE UNDER THE STANDARD FIRE
INSURANCE POLICY**

SUMMARY: Connecticut’s insurance statutes outline the standard fire insurance policy that insurers must write. This act permits commercial risk insurers to exclude coverage for loss caused by terrorism, as defined by the insurance commissioner, from standard fire insurance policies delivered, issued for delivery, or

renewed in Connecticut beginning July 1, 2004. Under the act, direct or indirect loss from terrorism may be excluded only (1) if the premiums charged for the policy reflect projected savings from the exclusion and (2) until the federal terrorism insurance program expires.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Federal Terrorism Risk Insurance Act of 2002

The 2002 Terrorism Risk Insurance Act (P.L. 107-297) expires on December 31, 2005, unless Congress extends it. The federal act created a temporary program under which the federal government shares the risk of loss from foreign terrorist attacks with the insurance industry. Insurers must offer coverage for loss caused by terrorism to all commercial insureds at the initial policy offer and at renewal. The act prohibits the coverage from differing materially from the terms, amounts, and other limitations applicable to losses arising from non-terrorist acts. The requirement applies to policies in effect, issued, or renewed from November 26, 2002 through December 31, 2004. The secretary of the treasury must decide by September 1, 2004 if the requirement also applies to policies issued or renewed in 2005.

The act requires insurers to give policyholders a disclosure that (1) identifies the amount of premium charged for losses caused by terrorism and (2) advises that the federal government will share a significant portion of such losses with insurers under the temporary program. If a policyholder does not pay the premium allocated for terrorism coverage, it will not be effective.

The act defines "act of terrorism" as any act certified by the secretary of treasury, in concurrence with the secretary of state and U.S. attorney general (1) to be an act of terrorism; (2) to be violent or dangerous to human life, property, or infrastructure; (3) to have resulted in damage within the United States (or outside the United States in the case of certain air carriers, vessels, or U.S. missions); and (4) to have been committed by someone on behalf of a foreign person or interest, as part of an effort to coerce the United States civilian population or to influence the policy or affect the conduct of the U.S. government by coercion. An act will not be certified as an act of terrorism if (1) aggregate property and casualty insurance losses resulting from the event do not exceed \$5 million or (2) it is committed in the course of a war declared by Congress. (This latter exclusion does not apply to workers' compensation claims).

PA 04-157—sSB 108

Insurance and Real Estate Committee

AN ACT CONCERNING APPEALS OF HEALTH CARE DETERMINATIONS MADE TO THE INSURANCE COMMISSIONER

SUMMARY: This act allows an enrollee, or health care provider acting on an enrollee's behalf with the enrollee's consent, who has exhausted the internal mechanisms provided by a managed care organization (MCO) or utilization review (UR) company to appeal a claim denial based on medical necessity to the insurance commissioner up to 30 days after receiving written notice of it. Existing law allows him to appeal determinations not to certify an admission, service, procedure, or extension of stay. The act specifies that he may appeal regardless of whether the determination was made before, during, or after the admission, service, procedure, or extension of stay.

By law, the appealing enrollee or provider must pay a \$25 filing fee to the Insurance Department. The act requires the MCO or UR company also to pay the fee. (By law, if the commissioner finds that the enrollee is indigent or unable to pay, she may waive the enrollee's fee.) The act requires the commissioner to refund the fee to (1) the MCO or UR company if she does not accept the appeal for full review or (2) the prevailing party after she completes the full review.

The act requires the enrollee's MCO to provide certain information to the commissioner, enrollee, or provider within five business days after receiving a written request from any of them. Failure to do so subjects the MCO to a fine of \$100 per day of violation.

EFFECTIVE DATE: October 1, 2004

INFORMATION REQUIRED

The act requires the MCO to verify in writing whether the enrollee's managed care plan is fully insured, self-funded, or otherwise funded. If the plan is fully insured or a self-insured governmental plan, the MCO must also send: (1) written certification to the commissioner or designated review entity that the benefit or service appealed is covered; (2) written certification that the policy or contract is accessible electronically, along with clear and simple instructions on how to access it; or (3) a copy of the entire policy or contract between the enrollee and the MCO. (If the plan is a self-insured governmental plan, the MCO must notify the plan sponsor, and the sponsor must send, or require the MCO to send, the copy.)

Under the act, the MCO's failure to provide information or notify the plan sponsor within the five-business-day period or before the 30-day appeal period ends, whichever is later as determined by the

commissioner, (1) creates a presumption for the review entity that the benefit or service is a covered benefit for purposes of accepting the appeal for full review and (2) entitles the commissioner to require the MCO to reimburse the Insurance Department for appeal-related expenses. The act specifies that the presumption established does not create or authorize benefits or services exceeding those in the enrollee's policy or contract.

BACKGROUND

Related Act

Section 38 of PA 04-258 and Section 87 of PA 04-2, May Special Session, generally limit the circumstances under which State Administered General Assistance (SAGA) medical assistance applicants or recipients can appeal adverse decisions regarding their medical care to the Department of Social Services (DSS). Recipients can seek this DSS review of coverage denial only after they have exhausted the plan's grievance process. (DSS is apparently contracting with a single MCO to run the SAGA medical assistance program.) Previously, DSS had to provide a review whenever it was requested.

PA 04-163—sSB 480

Insurance and Real Estate Committee

AN ACT CONCERNING ADMINISTRATIVE COST SAVINGS UNDER SMALL EMPLOYER HEALTH PLANS

SUMMARY: Under existing law, small employer premium rates must be community rated and adjusted for one or more of the following case characteristics: age, gender, geographic area, industry, group size, and family composition. This act adds administrative savings that result from administering an association group plan or a health plan arranged by the state comptroller to these case characteristics. The savings can be considered when determining premium rates if they (1) reduce the small employer's overall retention; (2) are measurable; and (3) specifically related to functions taken on directly by the plan administrator or association (e.g., marketing, billing, or claims paying). However, the savings may not reflect any reduced commissions.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Small Employer

The law defines a "small employer" as any person, firm, corporation, limited liability company, partnership, or association actively engaged in business for at least three consecutive months that, on at least 50% of its working days during the preceding 12 months, employed no more than 50 employees, at least half of them in Connecticut. A small employer includes a self-employed individual.

By law, insurers must use modified community rating for small employers. Community rating is the process of developing a uniform rate for all subscribers. Modified community rating adjusts the uniform rate for specific case characteristics. Rates cannot be based on the health status or claims experience of the small employer or its employees and their dependents.

Health Plan Arranged by Comptroller

Existing law authorizes the comptroller, with the attorney general's and insurance commissioner's approval, to arrange group hospital, medical, and surgical health insurance for small employers. The law requires the insurance to (1) be underwritten according to the small employer modified community rating law and (2) use the same participation requirements that apply to employees of community action agencies, nonprofit corporations, and municipalities.

PA 04-173—HB 5201

Insurance and Real Estate Committee

Public Health Committee

Appropriations Committee

Finance, Revenue and Bonding Committee

Planning and Development Committee

AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR MEDICALLY NECESSARY FORMULA

SUMMARY: This act adds cystic fibrosis to the definition of "inherited metabolic disease" in the insurance statutes. Thus, health insurance policies must cover amino acid modified preparations and low protein modified food products prescribed for the treatment of cystic fibrosis.

The act requires health insurance policies to cover medically necessary specialized formula for children up to age eight, instead of age three. Specialized formula is a nutritional formula exempt from the federal Food and Drug Administration's (FDA) general nutritional labeling requirements and is intended for use solely

under medical supervision in the dietary management of specific diseases.

The act also requires the policies to cover the preparations, food products, and specialized formulas on the same basis as other outpatient prescription drugs.

This act applies to individual and group health insurance policies delivered, issued for delivery, or renewed in Connecticut beginning October 1, 2004 that cover (1) basic hospital expenses, (2) basic medical-surgical expenses, (3) major medical expenses, (4) accidents only, or (5) hospital or medical services.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Cystic Fibrosis

Cystic fibrosis is a chronic and progressive genetic disease, usually diagnosed in childhood, that causes mucus to clog bodily organs, primarily the lungs and pancreas. It can lead to serious breathing problems, lung disease, malnutrition, and growth and development problems.

There is no cure for cystic fibrosis. Disease management varies widely and generally focuses on treating respiratory and digestive problems to prevent complications, including infections. Treatment usually involves a combination of medications, home treatment methods (including respiratory and nutritional therapies), and specialized care by health professionals.

Food Products

Amino acid modified preparations and low-protein modified food products are intended for inherited metabolic disease dietary treatment under a physician's direction.

FDA Nutritional Labeling Requirements

FDA regulations exempt infant formula from the general nutritional labeling requirements that apply to products intended for human consumption (21 CFR § 101.9(j)(7)). FDA has separate regulations on infant formulas that exempt from labeling requirements formulas represented and labeled for use by infants with inborn metabolic disorders, low birth weights, or unusual medical or dietary problems (21 CFR § 107.3).

FDA distinguishes between two types of exempt formulas: those that are readily available at retail stores and those that are not. Formulas available at a retail store are typically labeled for dietary management of diseases or conditions that are not clinically serious or life-threatening, even though they may also be labeled for use in clinically serious or life-threatening disorders. Formulas not available for general consumer purchase

are typically prescribed by a physician and must be requested from a pharmacist. They are labeled solely to provide dietary management for specific diseases or conditions that are clinically serious or life-threatening and generally are required for prolonged periods of time (21 CFR § 107.50).

PA 04-174—HB 5204

Insurance and Real Estate Committee

AN ACT CONCERNING MINOR CHANGES TO THE INSURANCE STATUTES

SUMMARY: By law, certain health insurance plans cannot impose more than a \$50 deductible on home health care. This act exempts high-deductible health plans used with federally qualified health savings accounts from this home health care deductible limit, thus allowing such policies to be sold in the state. The exemption applies to plans delivered, issued for delivery, or renewed in Connecticut that cover (1) basic hospital expenses, (2) basic medical-surgical expenses, (3) major medical expenses, (4) accident-only expenses, (5) limited benefit expenses, or (6) hospital or medical services.

The act extends the property casualty Connecticut Insurance Guaranty Association Act to a legal successor of an insolvent insurer following a merger by including a successor in the definition of "insolvent insurer." Thus, if an insolvent insurer merges with another company, the guaranty association must cover valid claims of policyholders and other claimants, up to the dollar limits of the policy and subject to ceilings fixed by state law, presented to the successor. By law, the guaranty association, whose members include licensed insurance companies, covers claims from \$100 up to \$300,000, except for workers' compensation claims, for which there is no dollar limitation. It also refunds 50% of unearned premiums, up to \$2,000 per policy.

The act revises the "acquisition of controlling interest" provisions regarding the activities of domestic insurance companies affiliated with holding companies. By law, control is presumed to exist if anyone can vote 10% or more of another person's securities. Previously, a rebuttal could be made only by showing that a "disclaimer of affiliation" was filed with the insurance commissioner. Under the act, showing that control does not in fact exist may rebut the presumption.

The act also makes technical changes.

EFFECTIVE DATE: October 1, 2004, except for the sections concerning health savings accounts, which take effect upon passage.

BACKGROUND

Health Savings Accounts

Health savings accounts (“HSAs”) are tax-exempt personal savings accounts in which account holders can save money for future medical expenses. HSAs are funded by employee contributions through pre-tax payroll deductions or employer contributions. The federal 2003 Medicare Prescription Drug, Improvement, and Modernization Act (P.L. 108-173) permits individuals under age 65 to contribute to an HSA if they are covered by a qualifying, high-deductible health insurance policy. On an individual policy, the minimum deductible allowed is \$1,000 with a \$5,000 cap on out-of-pocket expenses (indexed annually). For family policies, the minimum deductible allowed is \$2,000 with a \$10,000 cap on out-of-pocket expenses (indexed annually). Preventive care services, as well as coverage for accidents, disability, dental, vision, and long-term care are not subject to the deductible. Any employer may offer HSAs to its employees.

Medical Savings Accounts or Archer MSAs

Tax provisions of the 1996 federal Health Insurance Portability and Accountability Act (“HIPAA”) (P.L. 104-191) established a demonstration program to sell high-deductible health insurance policies to small business employees and self-employed individuals. Persons with these policies could then open tax-exempt

medical savings accounts (MSAs) that could be used for future medical expenses. MSAs authorized by HIPAA became known as Archer MSAs. The demonstration program ended December 31, 2003, after which no new Archer MSAs could be sold but established ones could be maintained.

PA 03-78 exempted high-deductible health plans used with federally qualified MSAs from the home health care deductible limit, thus allowing such policies to be sold in Connecticut.

Medicare Plus Choice MSAs

The 1997 federal Balanced Budget Act (P.L. 105-33) authorized a Medicare MSA demonstration program, which permitted Medicare beneficiaries to enroll in high-deductible health insurance policies and contribute to MSAs through December 31, 2003. MSAs authorized for Medicare recipients are known as Medicare Plus Choice MSAs. These are like Archer MSAs, except that Medicare (1) designates it as the only means of paying the policyholder’s qualified medical expenses; (2) instead of the beneficiary, deposits the money into the account; and (3) pre-approves the high-deductible policy selected by the beneficiary. The federal 2003 Medicare Prescription Drug, Improvement, and Modernization Act made the Medicare Plus Choice MSA program permanent.

PA 04-2—HB 5665*Emergency Certification***AN ACT CONCERNING THE PRACTICE OF LAW**

SUMMARY: This act specifies that the law prohibiting a person from practicing law in Connecticut unless admitted by the Superior Court cannot be construed to prohibit an attorney from practicing law in relation to an impeachment proceeding under the Connecticut Constitution if he is:

1. admitted to practice in another state or the District of Columbia and
2. retained by (a) the General Assembly, the House of Representatives, the Senate, a House or Senate committee, or the presiding officer at a Senate trial or (b) an officer subject to impeachment.

EFFECTIVE DATE: Upon passage and applicable to the practice of law from January 26, 2004.

BACKGROUND*Admission of Attorneys*

By law, the Superior Court can admit qualified people as attorneys under rules the judges establish for admission, qualification, practice, and removal. Someone not admitted as an attorney cannot practice law or appear as an attorney for another in a court in Connecticut or do other things that make him appear to be an attorney admitted in this state. A violation is punishable by up to two months in prison, a fine of up to \$250, or both and is considered contempt of court.

But the law prohibiting a person from practicing law in Connecticut unless admitted by the Superior Court specifies that it cannot be construed to prohibit (1) a town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name, and trade name certificates recorded or filed in the clerk's office; (2) anyone from practicing law or pleading to the court in his own case; or (3) anyone from acting as an agent or representative of a party in international arbitration.

Pro Hac Vice

Under court rules, a court can allow an attorney admitted to practice law in another state, the District of Columbia, or Puerto Rico to participate, to the extent authorized by the court, in a case in the Connecticut courts (the attorney appears *pro hac vice*). These appearances must be infrequent and for good cause. Good cause is limited to facts and circumstances that affect the client's personal or financial welfare,

including (1) a long-standing attorney-client relationship from before the case or the litigation's subject matter arose that gives the attorney specialized skill or knowledge of the client's affairs that is important to the case, and (2) the litigant's inability to obtain the services of Connecticut counsel.

The rules require an admitted Connecticut attorney to (1) apply on behalf of the out-of-state attorney; (2) be present at all proceedings; (3) sign all court papers; and (4) take responsibility for court papers, the progress of the case, and the out-of-state attorney's conduct. The out-of-state attorney must submit information about any complaints or discipline against him and is subject to Connecticut's attorney grievance procedures.

PA 04-19—SB 231*Judiciary Committee***AN ACT ESTABLISHING THE NORTHWEST CORNER PROBATE DISTRICT**

SUMMARY: This act eliminates the probate districts of (1) Canaan, consisting of the towns of Canaan and North Canaan; (2) Cornwall, consisting of the town of Cornwall; (3) Salisbury, consisting of the town of Salisbury; and (4) Sharon, consisting of the town of Sharon.

It establishes a new probate district of the Northwest Corner, consisting of all the towns from the probate districts the act eliminates: Canaan, Cornwall, North Canaan, Salisbury, and Sharon.

The act requires a judge to be elected for the newly created probate district in 2006 and every four years thereafter. Beginning January 3, 2007, the act gives the probate court for the newly created district jurisdiction over all probate business arising in the towns comprising it.

EFFECTIVE DATE: Upon passage, except for the provisions eliminating the districts, which takes effect January 3, 2007.

PA 04-28—HB 5218*Judiciary Committee
Public Health Committee***AN ACT CONCERNING DETERMINATIONS OF COMPETENCY TO STAND TRIAL AND ELIGIBILITY FOR CIVIL COMMITMENT**

SUMMARY: This act requires court-ordered competency examiners to include both, instead of either one, of these statutory findings in their reports: (1) whether there is a substantial probability that an incompetent defendant will regain competency if

committed to the Department of Mental Health and Addiction Services (DMHAS) for restoration treatment and (2) whether he appears to be eligible for civil commitment.

EFFECTIVE DATE: Upon passage

BACKGROUND

Incompetent Criminal Defendants

By law, courts order competency examinations when there is a question about a criminal defendant's ability to understand the court proceedings or assist in his defense. A team of mental health professionals conducts the examination and submits a court report. Courts must hold hearings within 10 days of receiving the report. The judge can commit an incompetent defendant to Connecticut Valley Hospital's restoration unit (for 18 months or the maximum jail sentence for the crimes charged, whichever is shorter) if it appears that he will regain competency within that period. Alternatively, he can give DMHAS custody, at a treatment facility the department chooses, pending civil commitment. The latter alternative is restricted to people charged with less serious crimes.

PA 04-29—sHB 5219

Judiciary Committee

AN ACT CONCERNING PROBATE COURT STERILIZATION ORDERS

SUMMARY: This act mandates at least a 10-day stay on involuntary sterilization procedures involving probate court wards (i.e., people a probate judge has found to be incapable of caring for themselves or managing their affairs and for whom he has appointed a conservator). If the ward files a Superior Court appeal during that period, the stay remains in effect until the appeal is resolved. The stay is automatically lifted when no appeal is filed.

The act exempts from the stay cases involving wards age 18 or older who are capable of giving informed consent and have done so in writing.

EFFECTIVE DATE: Upon passage

PA 04-47—SB 130

Judiciary Committee

Labor and Public Employees Committee

AN ACT CONCERNING THE TIME PERIOD FOR CERTAIN WORKERS' COMPENSATION PAYMENTS

SUMMARY: This act extends, from 10 to 20 days, the maximum amount of time employers have to make worker's compensation payments to injured employees:

1. under a workers' compensation commissioner's award,
2. under a voluntary agreement on compensation between an employer and injured employee, or
3. from the Second Injury Fund (the state-run fund that pays or contributes to benefits for certain workers with preexisting conditions).

By law, an employer who does not begin to pay within the required time is charged a penalty for each late payment equal to 20% of the payment plus any other interest or penalty imposed. Parties have 20 days to appeal a commissioner's award to the Compensation Review Board.

EFFECTIVE DATE: Upon passage

PA 04-50—SB 135

Judiciary Committee

AN ACT MAKING TECHNICAL CHANGES TO CERTAIN PROVISIONS CONCERNING CORPORATION MERGERS AND SHARE EXCHANGES

SUMMARY: This act makes technical changes in laws concerning corporate mergers and share exchanges.

EFFECTIVE DATE: Upon passage

PA 04-52—SB 292

Judiciary Committee

Public Health Committee

AN ACT CONCERNING THE STATUS OF PATIENTS OF THE WHITING FORENSIC DIVISION

SUMMARY: By law, people with psychiatric disabilities who are dangerous to themselves or others can be sent to the Whiting Forensic Division upon conviction for a felony or certain sex offenses or can be ordered there from Department of Correction (DOC) facilities. Division staff must give them a complete psychiatric examination every six months and report their findings and recommendations to the division's director, who then determines whether the patient should remain at the facility. This act requires that the director report his determination to the court that sent the patient to Whiting. It also requires a court to hold a hearing within 15 days after receiving a report recommending that a patient be returned to the custody of the correction commissioner. By law, the division must retain custody of such offenders until the

sentencing court orders their release or return to DOC custody.

EFFECTIVE DATE: October 1, 2004

PA 04-55—sSB 487

Judiciary Committee

Higher Education and Employment Advancement Committee

AN ACT ADOPTING THE UNIFORM ATHLETE AGENTS ACT

SUMMARY: This act makes significant changes to the law on athlete agents. Among other things, it:

1. expands the definition of athlete;
2. changes the types of agency contracts that are subject to the law's provisions by including agreements authorizing a person to negotiate endorsement contracts but excluding financial services contracts (prior law defined these as agreements where an athlete authorizes an athlete agent to provide financial services including making and carrying out investment and other financial decisions);
3. makes a number of changes to the reasons the Department of Consumer Protection (DCP) can refuse to issue or renew a registration or suspend or revoke one;
4. eliminates the requirement that an agent post a \$100,000 surety bond as a condition of registration;
5. extends the registration period from one to two years;
6. adds a safe harbor provision when an athlete initiates contact with an agent who is not registered (the agent must register within seven days after the initial contact);
7. alters the registration application requirements and adds provisions on registration and renewal for agents registered in other states;
8. alters the contract requirements;
9. increases from six to 14 days the time an athlete has to cancel an agency contract;
10. alters the provisions on prohibited conduct and allows athlete agents to enter agency contracts with student athletes before their collegiate eligibility expires;
11. alters the provisions on giving notice of contracts to athletic directors;
12. creates a cause of action by an educational institution against an agent or former student-athlete for damages caused by violations of the act;
13. eliminates provisions that specifically allowed for restitution and made violations unfair trade practices;

14. alters the record-keeping requirements imposed on agents and reduces, from seven to five years, the time the agent must keep records;
15. eliminates certain rules and prohibitions regarding interviewing athletes; and
16. eliminates DCP's authority to adopt regulations regarding athlete agents but places in statute many of the provisions previously in regulations.

EFFECTIVE DATE: January 1, 2005

STUDENT-ATHLETE

Similar to prior law, the act defines "student-athlete" as someone who engages in, is eligible to engage in, or may be eligible to engage in, an intercollegiate sport. But unlike prior law, the act does not limit its scope to athletes who (1) have not signed a contract with a professional sports team for employment or for future athletic services and (2) are enrolled in a higher education institution or grades 11 or 12 who engage in, are eligible for, or may within two years be eligible for, an intercollegiate sport.

The act defines "intercollegiate sport" as a sport played at the collegiate level for which eligibility requirements are set by a national association for the promotion of athletics, such as the National Collegiate Athletic Association (NCAA).

AGENT

Prior law defined an "athlete agent" as a person who (1) for compensation, recruits or solicits athletes to sign an agent, financial services, or professional sports services contract or (2) for a fee, procures or offers, promises, or attempts to obtain employment for an athlete with a professional sports team or as a professional athlete. The act instead defines "athlete agent" as an individual who (1) enters an agency contract with a student-athlete and (2) solicits a student athlete to enter such a contract. Unlike prior law, the act includes someone who represents to the public that he is an agent.

As under prior law, the term does not include the athlete's spouse, parent, or sibling. The act also excludes an athlete's grandparents and guardians and someone acting on behalf of a sports team.

The act allows only individuals to register as agents, thereby disqualifying corporations and other legal entities from registering.

AFFECTED CONTRACTS

The act defines “agency contract,” similar to prior law, as an agreement in which a student-athlete authorizes a person to negotiate or solicit a professional sports services contract or an endorsement contract. But the act makes endorsement contracts (defined as agreements under which a student-athlete receives consideration to use his publicity value on behalf of someone else) a type of agency contract subject to its provisions.

As under prior law, a “professional services contract” is an agreement under which an athlete is employed by, or agrees to give services as a player on, a team or as a professional athlete.

But the act does not apply to financial services contracts, as prior law did.

REGISTRATION

The act extends the registration period for athlete agents from one to two years. The act sets the fee for an application or renewal at \$200 for the two-year period instead of the \$100 annual fee under prior law. The act also sets a \$200 fee for applications or renewals based on registration in another state.

Safe Harbor Provision

The act allows an individual to act as an agent before registration for all purposes except signing an agency contract if (1) the student-athlete or someone on his behalf contacts the individual and (2) the individual files an agent registration application within seven days of the initial act taken as an agent. A contract signed in violation of this provision is void. The act requires the athlete agent to return any consideration received under such a contract.

The act defines “contact” as a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter an agency contract.

Application Requirements

The act requires an applicant to provide most of the same information as required previously under regulations but it adds some requirements and eliminates others. As under prior regulations, the application must include: (1) the applicant’s name and address; (2) his business or employer, if applicable; (3) occupations engaged in for the past five years; and (4) a description of formal training, practical experience, and education.

Regulations previously required applicants to provide the names and addresses of all who had a

financial interest in the agent’s business. If the applicant was a corporation, education and experience information had to be provided about all who acted on the corporation’s behalf as an athlete agent. Instead, the act specifies that the applicant must provide the names and addresses of anyone who is (1) a partner, member, officer, manager, associate, or profit-sharer in the agent’s business or (2) an officer, director, or shareholder with at least 5% of the shares in a corporation employing the agent. An applicant must state whether he, or anyone named under this requirement (1) was convicted of a felony, and identify the crime; (2) was found to have made a false, misleading, deceptive, or fraudulent representation by an administrative or judicial proceeding; (3) did something that resulted in an athlete’s sanction, suspension, or declaration of ineligibility for intercollegiate sports; (4) was the subject of a sanction, suspension, or disciplinary action arising out of his professional conduct; or (5) was denied, refused, or not granted renewal of a license.

The act adds requirements that the applicant provide the (1) names and addresses of three references unrelated to the applicant and (2) name, sport, and last-known team of each individual for whom the applicant acted as an agent in the past five years.

The act eliminates a requirement that DCP adopt regulations to establish bond requirements for athlete agents (the regulations required a \$100,000 surety bond).

Regulations also allowed DCP to reserve the right, as a condition of registration, to approve the form of an agency, financial services, or professional services contract. The act does not include this explicit authority.

The act requires the applicant to sign or authenticate the application under penalty of perjury (a class D felony, see Table on Penalties).

Registration Renewal

As under prior law, the athlete agent must submit a renewal application on a form provided by DCP with the same information required for the original application. The act specifies that the athlete agent signs the form under penalty of perjury.

Registered in Other States

The act allows an applicant who is already registered in another state to submit a copy of his application to, and the certificate issued by, the other state instead of completing the Connecticut application. The act requires the DCP commissioner to accept the application if (1) it was submitted to the other state within the last six months, (2) the applicant certifies that

the information is correct, (3) the information is substantially similar or more comprehensive than what this state requires, and (4) the applicant signed it under penalty of perjury.

The act also includes a similar provision on registration renewal based on a valid registration in another state.

Temporary Registration

The act allows the commissioner to issue a temporary registration while an application for registration or renewal is pending.

REFUSAL TO ISSUE OR RENEW REGISTRATION, SUSPENSION, AND REVOCATION

The act makes a number of changes to the reasons DCP can refuse to issue or renew a registration or suspend or revoke one. The act uses a broad standard about conduct that has a significant adverse effect on fitness for the job and then includes a list of considerations (some of which are similar to the criteria previously in regulations).

The act allows the commissioner to refuse to issue or renew a registration or suspend or revoke one if he finds the applicant engaged in conduct that has a significant adverse effect on his fitness to act as an athlete agent. The commissioner can consider whether the applicant:

1. was convicted of a felony;
2. made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in his application;
3. engaged in conduct that would disqualify him from being a fiduciary;
4. engaged in conduct the act prohibits to induce an athlete to enter an agency contract;
5. had an athlete agent registration suspended, revoked, denied, or renewal refused in any state;
6. engaged in conduct that resulted in a student athlete's or educational institution's sanction, suspension, or declaration of ineligibility for participation in interscholastic or intercollegiate athletic events; or
7. engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

The commissioner must consider (1) how recently the conduct occurred, (2) the nature of the conduct and its context, and (3) any other relevant conduct.

The act explicitly requires notice and opportunity for a hearing before denying, suspending, revoking, or refusing to renew a registration. But the act eliminates explicit authority for revoking a registration for

conviction of a violation of the athlete agent laws, summary suspension after a criminal violation, and a one-year waiting period before allowing an agent to reapply for a registration after a revocation or judgment affirming it.

Under prior law, the commissioner could refuse to issue or renew, suspend, or revoke a registration for violating any of the statutory provisions or the regulations. DCP could take action if the agent, its employees, agents, or officers:

1. was not lawfully engaged in business in the state;
2. engaged in conduct likely to mislead, deceive, or defraud the public or the commissioner;
3. engaged in untruthful or misleading advertising;
4. made a material misrepresentation;
5. made a false promise of a type likely to influence, persuade, or induce an athlete to enter a contract;
6. failed to account within a reasonable time for or remit funds that belong to client athletes;
7. was convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or similar offenses in this state or elsewhere;
8. engaged in dishonest, fraudulent, or improper dealings;
9. violated or failed to comply with the agent statute or regulations;
10. acted as agent after his bond was cancelled;
11. commingled funds of others in an escrow or trustee account;
12. contacted an athlete directly or indirectly before being registered;
13. entered an agreement that offered something of value to an employee of a higher education institution in this state where the athlete is enrolled or a member of his family or a friend likely to influence the athlete's decisions, in return for referring a client;
14. divided fees or received compensation from a potential employer of an athlete that he has a contract with;
15. committed an unfair trade practice;
16. collected a fee over 10% of the direct and indirect compensation an athlete receives under a contract in a calendar year; or
17. sold or transferred an interest in or a right to profits from working as an agent in this state to someone who is not registered in this state.

The regulations also previously allowed DCP to refuse to issue or renew a registration if the applicant lacked formal training or practical experience in (1) contracts and their negotiation, (2) complaint resolution, (3) arbitration, or (4) civil resolution of contract

disputes. For business entities, DCP was required to review their employees and agents. DCP could consider other relevant training, education, and experience for these requirements.

CONTRACTS

Form

The act allows agency contracts to be in records (inscribed on a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form), while prior law required them to be written. The act does not require the use of plain language which regulations previously required.

Contents

The law requires an agency contract to contain (1) information on amounts the student athlete pays the athlete agent for services, (2) a description of services provided, and (3) the date of execution. The act adds that the contract must disclose (1) anything else the agent has or will receive from other sources for entering the contract or providing services, (2) unregistered individuals who will receive compensation, (3) expenses the athlete must pay, and (4) the contract's duration.

The act requires the agent to give a record of the agency contract to the student-athlete at the time of execution but no longer requires him to give a copy to DCP.

The act eliminates the requirement that the agent impose fees only according to the schedule in the contract and a provision allowing changes to the schedule effective seven days after he files a copy of the revised contract with DCP.

Contract Warning/Disclaimer

As under prior regulations, the act requires an agency contract to contain a conspicuous notice in boldface capital letters about (1) the possibility of losing eligibility as a student-athlete and (2) the right to cancel the contract. The act adds that the notice must state that canceling might not reinstate eligibility.

The act adds that the notice must include the requirement to notify an athletic director (described below). It eliminates the requirement that the notice state that (1) registration does not imply approval of the agent or contract and (2) the athlete should read the contract.

The act specifies that the notice must be placed near the student-athlete's signature.

Non-Conforming Agency Contracts

The act allows an athlete to void an agency contract that does not satisfy the rules described above. In those circumstances, he is not required to pay anything under the contract or return anything the agent gave him to induce him to agree to the contract.

Notification to Athletic Director

Regulations previously required the agent to give a copy of an agent contract, financial services contract, or professional services contract to the athletic director of a higher education institution where the athlete was enrolled in this state within three business days of signing. The act instead:

1. applies only to agency contracts;
2. requires the agent to give notice in a record and also requires the athlete to inform his athletic director;
3. requires the agent to give a record to an athletic director of an educational institution where he has reasonable grounds to believe the athlete intends to enroll, as well as an athletic director where the athlete is enrolled; and
4. requires notice within 72 hours or before the athlete participates in an athletic event, whichever is less, which will be less than the three business days required under the regulations in some circumstances.

The act defines "athletic director" as someone responsible for administering an athletic program, whether the responsibilities are for both sexes or for a single sex.

Right to Cancel Agency Contract

The act increases, from six to 14 days, the time an athlete has to cancel an agency contract and requires the student-athlete to cancel by giving notice in a record. The act also provides that (1) the student-athlete cannot waive this right and (2) if he cancels the contract, he is not required to pay anything under the contract or return anything received from the athlete agent to induce the contract.

RECORD RETENTION

The act reduces, from seven to five years, the time that an agent must keep records. By law, the agent must keep (1) the name and address of individuals represented and (2) agency contracts entered into. The act also requires the agent to keep records of costs in recruiting or soliciting athletes instead of information on fees received, services provided, and travel and entertainment expenses. The act makes these records

open to inspection by DCP, while prior law required the agent to provide DCP with the information in the records on written request.

PROHIBITED CONDUCT

The act makes a number of changes to the types of conduct in which athlete agents are prohibited from engaging.

The act eliminates a prohibition against (1) entering oral or written agency contracts or professional sport services contracts with an athlete before his collegiate eligibility expires and (2) dividing fees with or receiving compensation from a professional sports league or franchise or its representatives or employees.

Prior law prohibited (1) entering an oral or written agreement offering anything of value to an employee of an institution of higher education in the state for referring an athlete and (2) giving, offering, or promising anything of value to an athlete, his guardian, or member of his immediate family before his college eligibility expires. The act instead prohibits an athlete agent from furnishing anything of value to a (1) student-athlete before entering an agency contract or (2) an individual other than the athlete or another registered agent, with intent to induce the athlete to enter a contract.

Both the act and prior law prohibit an agent from giving materially false or misleading information or making materially false promises or representations. The act specifies that the athlete agent must not do so intending to induce a student-athlete to enter a contract.

The act adds provisions prohibiting an athlete agent from intentionally (1) initiating contact with a student-athlete unless the agent is registered, (2) refusing or failing to retain or permit inspection of records that he must keep, (3) failing to register, (4) providing materially false or misleading information in an application for registration or renewal, (5) pre- or post-dating an agency contract, and (6) failing to notify a student-athlete before he signs or authenticates an agency contract for a particular sport that it may make him ineligible to participate as a student-athlete in that sport.

PENALTIES

As under prior law, a violation of the athlete-agent laws by an agent is a class B misdemeanor (see Table on Penalties).

As under prior law, the act allows the commissioner to assess a civil penalty against an athlete agent after notice and a hearing. The act changes the penalty from up to \$1,000 plus profits derived from the violation minus restitution paid, to a maximum of \$25,000.

The act eliminates provisions allowing restitution and making violations an unfair trade practice.

CAUSE OF ACTION BY EDUCATIONAL INSTITUTION

The act gives an educational institution the right to sue an athlete agent or former student-athlete for damages caused by violations of the act. It allows the court to award costs and reasonable attorney's fees to the prevailing party. Damages include losses and expenses incurred because of (1) injuries from the violation or (2) penalties, disqualification, or suspension from participation in athletics by (a) a national association for promoting and regulating athletics, (b) an athletic conference, or (c) a reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by an organization. The right to sue arises when the educational institution discovers, or by reasonable diligence should have discovered, the violation. The liability of the athlete agent and student-athlete is several and not joint. The act does not restrict rights, remedies, or defenses.

SERVICE OF PROCESS

Under the act, a nonresident acting as an athlete agent in this state appoints the secretary of the state as his agent for service of process in a civil action related to his actions as an athlete agent here.

INTERVIEWS

The act eliminates the requirements relating to interviews between athletes and agents. Under prior law, the time, place, and duration of an interview between an athlete and agent had to follow any policy adopted or followed by the school where the athlete was enrolled. It defined an interview as a face-to-face meeting to recruit or solicit the athlete for (1) an agent contract, financial services contract, or professional services contract or (2) employment with a professional sports team or as a professional athlete.

REGULATIONS

The act eliminates DCP's explicit authority to adopt regulations for agent registration and regulation of athletes including (1) agent qualifications and registration procedures, (2) bond requirements, (3) requirements for contracts including fee schedules, (4) limits and conditions on communicating with athletes such as advertising and interviewing, (5) guidelines for registration suspension and revocation, (6) limits on fees and compensation such as the transfer of interests or rights to participate in profits made by agents, and (7)

other reasonable regulations the commissioner finds necessary or desirable.

OTHER PROVISIONS

The act specifies that the legal effect, validity, or enforceability of electronic records or signatures and contracts formed or performed with records and signatures conforms to the requirements of the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) (15 U.S.C. § 7001 et seq.) but it supersedes, modifies, and limits E-SIGN as allowed by the federal act.

The act specifies that in applying and construing its provisions, consideration must be given to the need to promote uniformity.

The act states that if any provision or its application to a person or circumstance is invalid, it does not affect other provisions or applications of the act that can have effect without the invalid provision or application. It also states that its provisions are severable.

The act also deletes provisions (1) in regulations that a business entity that acts as an athlete agent is not relieved of responsibility for the conduct of its agents, employees, or officers, and the agents, employees, and officers are not relieved of responsibility by reason of their relationship with the business and (2) in statute that nothing requires an athlete to use an agent or limits his ability to contract for services outside the state.

BACKGROUND

E-SIGN

This federal act applies to transactions in interstate and foreign commerce. It validates the use of electronic records and electronic signatures in transactions but does not require anyone to agree to use or accept electronic records or signatures. Where E-SIGN conflicts with a state law, it preempts state law. But a state provision can modify, limit, or supersede E-SIGN's electronic contracting provisions if it provides alternative procedures or requirements for the use or acceptance of electronic records or signatures, is consistent with the federal law, does not require or accord greater legal status or effect to a specific technology, and specifically references the federal act.

PA 04-56—SB 492

Judiciary Committee

AN ACT CONCERNING CORPORATE FRAUD ACCOUNTABILITY

SUMMARY: The law prohibits an individual or publicly held corporation from altering, falsifying, destroying, or concealing a record, document, or tangible object to impede, obstruct, or influence a state investigation into publicly held securities after (1) the investigation begins or (2) a person has reasonable knowledge that an investigation is likely to begin. The act clarifies which corporations the law includes by replacing the term “publicly held corporation,” which the law does not define, with a definition from the federal Sarbanes-Oxley Act of 2002, upon which the state law was modeled. Under the new definition, the law applies to corporations whose securities are registered under the federal Securities Exchange Act of 1934 or which must file related reports under that act, thus covering all corporations offering stock to the public. The act also expands the types of securities that may be the subject of the state investigation to include privately held securities. And it applies the new definition of a corporation to provisions on accountants conducting audits of publicly held corporations.

The law protects corporate employees who assist in investigations or proceedings involving conduct that violates certain state and federal laws prohibiting fraud. The act specifies that these provisions apply to (1) corporations organized under Connecticut law, (2) corporations authorized to transact business in Connecticut, and (3) corporate employees who perform any portion of their duties in Connecticut. It applies the new definition of a publicly held corporation to those provisions. Prior law included in the protections all publicly held corporations and their employees, without regard to where the corporations were organized or transacted business or where their employees worked.

EFFECTIVE DATE: Upon passage

BACKGROUND

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 imposes stricter standards and increased oversight for corporate accounting in order to protect investors from executive fraud. It requires greater transparency and disclosure of corporations' financial status and transactions.

PA 04-64—sHB 5212

Judiciary Committee

AN ACT ADOPTING REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE CONCERNING DOCUMENTS OF TITLE

SUMMARY: This act makes a number of changes to Article 7 of the Uniform Commercial Code (UCC)

concerning warehouse receipts, bills of lading, and other documents of title. It allows use of electronic documents of title and generally applies the same rules to them as to tangible documents, but it adds provisions on control of an electronic document as the equivalent to possession and endorsement of a tangible document of title. The act also establishes rules to allow an electronic or paper document of title to be issued as a substitute for the other.

The act:

1. clarifies the rules about when a document of title is non-negotiable,
2. changes provisions on warehouse liability,
3. allows a provision limiting a carrier's liability for damages to be in a bill of lading or a transportation agreement,
4. allows a warehouse to have a lien on goods covered by a storage agreement and adds a provision on household goods,
5. expands the coverage of a carrier's lien to include proceeds from goods in the carrier's possession,
6. imposes certain obligations on any issuer of a bill of lading and not just common carriers,
7. gives courts flexibility in certain circumstances on whether to require security to protect against loss when ordering delivery of goods or issuance of a substitute document, and
8. adds some new definitions and alters others (including some applicable throughout the UCC).

The act allows use of a "record" rather than a writing for a number of purposes including delivery orders and directions to a bailee (a person who possesses goods and contracts to deliver them). It defines a record as information inscribed on a tangible medium or stored in an electronic or other medium that is retrievable in a perceivable form.

The act eliminates a provision that UCC Article 7 is subject to a tariff or classification or a regulation filed or issued under one of them. It generally deletes references to tariffs, classifications, and regulations throughout Article 7. By law, Article 7 remains subject to a U.S. treaty or statute or state regulatory statute, and a tariff, classification, or regulation could still apply if enforced by federal or state law. The parties could also incorporate one by agreement.

The act applies to any document of title issued or bailment (the delivery of property by one person to another under a contract to return or dispose of the goods) arising on or after October 1, 2004. It does not apply to a right of action that accrued before October 1, 2004. The act specifies that a document of title issued or bailment that arises before October 1, 2004 and the rights, obligations, and interests involved are governed

by any statute or rule that the act amends or repeals as if it were not amended or repealed.

The act also makes conforming changes in other articles of the UCC, including changes to Article 9 on secured transactions, to allow a security interest in electronic documents of title.

EFFECTIVE DATE: October 1, 2004

DOCUMENTS OF TITLE

A document of title includes (1) a bill of lading, dock warrant, dock receipt, or warehouse receipt or (2) an order to deliver goods or another document that, in the regular course of business or financing, is treated as adequate evidence that the person possessing it is entitled to receive, hold, and dispose of the document and the goods it covers. It must purport to be issued by or addressed to a bailee and purport to cover goods the bailee possesses that are either identified or fungible portions of an identified mass.

The act expands the definition to include "records" to permit issuance and transfer or negotiation of electronic as well as tangible documents of title. It defines a "record" as information inscribed on a tangible medium or stored in an electronic or other medium that is retrievable in a perceivable form. The act makes control of a "record," for electronic documents, equivalent to possession of a tangible document.

The act defines (1) an electronic document of title as one evidenced by a record that consists of information stored in an electronic medium and (2) a tangible document of title as one evidenced by a record that consists of information inscribed on a tangible medium.

CONTROL OF ELECTRONIC DOCUMENTS OF TITLE

Under the act, a person has control of an electronic document of title if a system employed to evidence the transfer of interests in the electronic document reliably establishes that person as the one to whom the document was issued or transferred. This requirement is satisfied if the document is created, stored, and assigned so that:

1. there is a single authoritative copy that is unique, identifiable, and unalterable, except as the act permits;
2. that copy identifies the person asserting control as the person it was (a) issued to or (b) most recently transferred to;
3. the authoritative copy is communicated to and maintained by the person asserting control or his designated custodian;
4. copies or amendments that add or change an identified assignee of the authoritative copy

can be made only with consent of the person asserting control;

5. each copy of the authoritative copy and copies of a copy are readily identifiable as copies; and
6. any amendment to the authoritative copy is readily identifiable as authorized or unauthorized.

SUBSTITUTING AN ELECTRONIC OR TANGIBLE DOCUMENT OF TITLE

Under the act, the issuer of a document of title can issue a tangible one as a substitute for an electronic one or vice versa if:

1. a person entitled to enforce the document requests it and surrenders control of the electronic document or possession of the tangible document to the issuer and
2. the new document contains a statement that it is issued as a substitute.

When the new document of title is issued, (1) the previous version is no longer effective or valid and (2) the person who procured the new document warrants to those later entitled under it that, when he surrendered control or possession of the document to the issuer, he was the person entitled to enforce it.

NEGOTIATING ELECTRONIC DOCUMENTS

The act applies the existing rules for negotiating documents of title to tangible documents and sets different rules for electronic documents. For negotiable tangible documents, a document with original terms (1) running to the order of a named person is negotiated by the named person's endorsement and delivery and (2) running to bearer is negotiated by delivery.

Under the act, for negotiable electronic documents:

1. delivery (voluntary transfer of control) is sufficient for negotiation when its original terms run to the order of a named person or bearer and endorsement is not required when there is a named person and
2. when the terms run to the order of a named person and the named person has control of the document, it is the same as if it had been negotiated.

As under prior law, a negotiable tangible document is not duly negotiated if the negotiation involves receiving it in settlement or payment of a monetary negotiation. For negotiable electronic documents, the act applies this rule to delivery of the document rather than receiving it.

ELECTRONIC DOCUMENTS AND PAYMENT

The law sets rules, which the parties can change, for payment for the sale of goods. If the seller is authorized, he can ship the goods under reservation and tender the documents of title and the buyer can inspect the goods after arrival before payment is due unless it is inconsistent with the contract. If delivery is otherwise authorized and made by documents of title, payment is due regardless of where the goods are to be received when and where the buyer is to receive the documents. The act limits this last rule to delivery of tangible documents. It adds a rule for electronic documents that payment is due (1) when the buyer is to receive delivery of the documents and (2) at the seller's place of business or his residence if there is no place of business.

NEGOTIABLE DOCUMENTS

By law, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person. The act (1) eliminates a provision regarding overseas trade and (2) adds that a document of title is non-negotiable if it is issued with a conspicuous legend that it is non-negotiable.

WAREHOUSE LIABILITY

By law, a warehouse receipt or storage agreement can limit the amount of a warehouse's liability for loss or damage. The act eliminates a requirement that the term in the receipt or agreement specify liability per article or item or value per unit of weight beyond which the warehouse is not liable.

UNAUTHORIZED ALTERATION

By law, a tangible warehouse receipt that is altered without authorization remains enforceable against the issuer as originally executed. Under the act, this applies to electronic warehouse receipts as well.

By law, a purchaser for value can treat an unauthorized insertion into a blank on a negotiable warehouse receipt as authorized if he does not have notice of the lack of authority. The act also requires the purchaser to be a good faith purchaser. But it limits this provision to tangible warehouse receipts (the act's provisions on control of electronic documents would prohibit unauthorized access and changes).

WAREHOUSE LIENS

The act allows a warehouse to have a lien on goods based on a storage agreement as well as a warehouse receipt, and it applies the same rules to these liens as to liens based on warehouse receipts. The lien is against

the bailor on the goods or their proceeds for storage or transportation charges. If stated, the warehouse can have a general lien on stored goods for the same charges in relation to other goods.

The act makes a warehouse lien on household goods (furniture, furnishings, and personal effects used by the depositor in a dwelling) for charges and expenses related to them effective against anyone, if the depositor was the legal possessor of the goods at the time of deposit.

Notice

The law places requirements on enforcing a warehouse lien by selling the goods. A warehouse can enforce its lien on goods in a commercially reasonable manner and under certain conditions including notifying all people known to claim an interest in the goods. The act deletes a requirement that the notice be delivered in person or sent by registered or certified mail receipted on mailing to the person's last-known address. The law imposes additional requirements for goods stored by a merchant in the course of his business. The act applies the general UCC provision, which requires taking steps reasonably required to inform the person in ordinary course, whether or not the person actually comes to know of it.

CARRIER'S LIEN

The act expands the lien that a carrier has on goods covered by a bill of lading to include also the proceeds from goods in its possession. The lien is for charges incurred after receiving the goods for storage and transportation and those reasonably incurred in their sale.

ISSUERS OF BILLS OF LADING

The act requires any issuer of a bill of lading, and not just issuers who are common carriers, to:

1. count the packages of goods or determine the kind and quantity of goods if shipped in bulk when it loads the goods (words such as "shipper's weight, load, and count" or similar words that the description was made by the shipper are ineffective except for goods concealed in packages) and
2. determine the kind and quantity within a reasonable time after receiving the shipper's request to do so, when bulk goods are loaded by a shipper that makes adequate facilities to weigh the goods available to the issuer ("shipper's weight" and similar words are ineffective).

In other cases, as under prior law, if the document states that the issuer does not know whether all or part of the goods conform to the description the issuer has no liability to the consignee for mis-description of the goods.

TANGIBLE BILLS OF LADING

The act limits bills of lading in a set (which some nations use in international trade) to tangible bills of lading. The existing rules apply to them. By law, bills of lading in a set are prohibited in domestic trade.

The act limits the application of certain provisions to tangible documents of title because they are not applicable to electronic documents that can be transferred only by delivery of control. These include:

1. that endorsement of a document issued by a bailee does not make the endorser liable for a default by the bailee or previous endorser and
2. that the transferee of a negotiable document has a specifically enforceable right to have its transferor supply any necessary endorsement, but the transfer becomes a negotiation only when the endorsement is supplied.

COURT ORDERS

The law allows a court to order delivery of goods or issuance of a substitute document of title when a document is lost, stolen, or destroyed. The bailee can comply with the order without liability. The law requires the claimant to post security approved by the court to indemnify anyone who might suffer loss as a result of non-surrender of a document that is negotiable. The act provides an exception: if the court finds that anyone who may suffer a loss is adequately protected against the loss, it need not require security.

LEASES

The act adds a number of provisions regarding leases of personal property. It specifies that whether a document of title fulfills the obligations of a lease contract is determined by UCC Article 2A on leasing goods.

By law, a bailee must deliver goods to the person entitled under a document of title, but he is not required to do so under certain circumstances such as when the seller exercises a right to stop delivery or there is a diversion, reconsignment, or other authorized disposition. The act adds that a bailee is not required to deliver goods under the document when a lessor exercises a right to stop delivery.

By law, a document of title confers no right in goods against a person who had a legal interest or perfected security interest in them before the document

was issued and did not either deliver or entrust the goods or a document of title covering them to the bailor or the bailor's nominee with power to dispose of them or acquiesce in the issuance of the document of title. The act also applies this provision to the power to dispose of goods under the (1) UCC Article 2A provisions on a lessor's subsequent lease of goods and a lessee's sale or sublease of goods and (2) UCC Article 9 provision on a lessee in the ordinary course of business taking its leasehold interest free of a security interest in the goods created by a lessor, even if the security interest is perfected and the lessee knows of its existence.

For non-negotiable documents of title, a transferee's rights can be defeated until the bailee receives notice of the transfer in certain circumstances. The act adds that a transferee's rights can be defeated, in addition to other parties given these rights by law, by (1) creditors of the transferor that could treat a lease as void and (2) a lessee from the transferor in the ordinary course of business if the bailee delivered the goods to the lessee or received notice of the lessee's rights.

The law allows a seller to stop delivery of goods under a non-negotiable document of title if he meets the notice requirements. The act also applies this to lessors. As the law provides for sellers, the act entitles a bailee who honors a lessor's instructions to be indemnified by the lessor for loss or expense.

The act specifies that the warranties on negotiation or delivery of a document of title are in addition to any warranty made in leasing the goods.

OTHER PROVISIONS

The act deletes a provision that (1) Article 7 does not repeal or modify any laws on the form or content of documents of title or services or facilities afforded by bailees, or regulating a bailee's business in respects not specifically dealt with in the UCC and (2) the fact that those laws are violated does not affect the status of a document of title that otherwise complies with the UCC definition of a document of title.

The act provides that Article 7 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) except for certain provisions on consumer disclosures (requiring consent for electronic delivery of disclosures the law requires to be in writing). It specifies that it does not authorize electronic delivery of court notices and certain notices regarding utility services, housing, health and life insurance, and product recalls. The act also makes Article 7 govern when there is a conflict with the Uniform Electronic Transactions Act (UETA).

UCC ARTICLE 7 DEFINITIONS

For purposes of UCC Article 7 on warehouse receipts, bills of lading, and other documents of title, the act defines:

1. a "carrier" as the person who issues a bill of lading;
2. "good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing (under prior law the definition applicable generally throughout the UCC applied to Article 7—honesty in fact in the conduct or transaction);
3. a "shipper" as the person that enters a transportation contract with a carrier; and
4. "sign" as having present intent to authenticate or adopt a record to (a) execute or adopt a tangible symbol or (b) attach to or logically associate with the record an electronic sound, symbol, or process.

GENERAL UCC DEFINITIONS

The act changes a number of definitions that apply throughout the UCC unless another definition is provided.

The law defines a "bill of lading" as a document of title evidencing receipt of goods for shipment issued by a person in the business of transporting or forwarding goods. The act specifies that the person can be in the business, directly or indirectly, of transporting or forwarding goods. It also deletes specific reference to an airbill, although it is likely included under the general definition of a bill of lading. Prior law defined an airbill as a document serving for air transportation as a bill of lading does for marine or rail transportation, including an air consignment note or air waybill.

Under prior law, a "bearer" included a person in possession of a document of title. The act specifies that it includes a person in possession of a negotiable tangible document or in control of a negotiable electronic document.

The act alters the definition of "conspicuous." The act only refers to conspicuous terms rather than clauses. It refers to displayed or presented terms as well as written ones. It specifies that a conspicuous term includes (1) a heading in capitals equal or greater in size than the surrounding text or in contrasting type, font, or color (prior law referred to a heading in capitals) and (2) language in the body of a record or display in larger type than the surrounding text; in contrasting type, font, or color to surrounding text of the same size; or set off from surrounding text of the same size by symbols or other marks that call attention to it (prior law was larger or contrasting type or color). It deletes the rule that any stated term in a telegram is conspicuous.

Under prior law, “delivery” included the voluntary transfer of possession of a document of title. The act limits this to tangible documents and makes delivery for electronic documents of title voluntary transfer of control.

Under prior law, a “holder” included a person in possession of a document of title if the goods were deliverable to bearer or to the order of the person in possession. Under the act, a “holder” is the person who (1) possesses a negotiable tangible document of title if the goods are deliverable to bearer or the order of the possessor or (2) has control of a negotiable electronic document of title.

As under prior law, “send” means to deposit in the mail or deliver for transmission by other usual means of communication, a writing or notice with postage or costs provided and properly addressed (for instruments, to an address specified on them or otherwise agreed) or, if no proper address, to an address reasonable under the circumstances. The act includes records as well as writings and notices.

The act adds a provision in the definition of “receives.” A person receives a notice when it is duly delivered at the place of business through which the contract was made or another location held out by the person for receiving communications. The act adds that it must be duly delivered in a form reasonable under the circumstances.

CHANGES TO UCC ARTICLE 9 SECURED TRANSACTIONS

The act makes changes to UCC Article 9 on secured transactions to allow security interests in electronic documents of title and make distinctions between electronic and tangible documents of title. For the most part, existing rules for documents of title apply to electronic versions of the documents with the exception that control of the electronic document is substituted for possession of the tangible document.

Security Interests

Generally, one of the requirements to make a security interest enforceable against the debtor and third parties is a security agreement or possession or control of the collateral by the secured party. The act requires the secured party’s control of an electronic document of title in order to have an enforceable security interest in it.

The act allows perfection of a security interest in electronic documents when the secured party has control and the security interest remains perfected only while the secured party retains control. The act limits perfection of documents of title by possession to tangible documents. It generally applies the same rules

to security interests in electronic documents as tangible documents. The act adds that a financing statement is not necessary to perfect a security interest in an electronic document of title that is perfected by control.

Under prior law, the law of the jurisdiction where a negotiable document was located governed perfection and the priority of non-possessory security interests in the document. The act limits this rule to tangible negotiable documents and makes the law of the jurisdiction of the debtor govern the perfection and priority of a security interest in an electronic document of title.

Duty When Obligation Ends

The law, subject to variation by agreement, imposes certain duties on a secured party when there is no longer any outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or give value. The secured party has certain obligations when he receives an authenticated demand from the debtor in these circumstances. Under the act, within 10 days of receiving an authenticated demand, a secured party with control of an electronic document of title must:

1. give control of the electronic document to the debtor or its designated custodian;
2. communicate to the custodian, if the debtor’s designated custodian also maintains the authoritative copy of the electronic document for the secured party, in an authenticated record that the custodian no longer has an obligation to comply with the secured party’s instructions and must comply with the debtor’s instructions; and
3. take appropriate action to allow the debtor or its designated custodian to make copies or revisions of the authoritative copy that add or change an identified assignee of the authoritative copy without the secured party’s consent.

Other Provisions

Under prior law, a buyer, other than a secured party, of a document of title took free of a security interest or agricultural lien if he gave value and received delivery of the collateral without knowledge of the security interest or agricultural lien and before the interest or lien was perfected. The act limits this to tangible documents. It provides that a buyer, other than a secured party, of electronic documents takes free of a security interest if he gave value without knowledge of the security interest and before the security interest is perfected.

By law, when a security interest or agricultural lien is perfected by a filed financing statement that contains certain incorrect information, a purchaser of the collateral, other than a secured party, takes free of the security interest or agricultural lien to the extent he gave value in reasonable reliance on the incorrect information. For chattel paper and documents, the purchaser must receive delivery of the collateral. The act limits this last provision to tangible documents and chattel paper.

The act allows a document of title to be a financial asset and subject to certain provisions of UCC Article 8 on investment securities to the extent that the securities intermediary who holds it agrees with the person entitled under the document that it will be treated as a “financial asset” governed by Article 8.

BACKGROUND

E-SIGN

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) (15 U.S.C. § 7001 et seq.) validates the use of electronic records and signatures. It applies to interstate and foreign commerce. Where E-SIGN conflicts with a state law, it preempts state law. But a state provision can modify, limit, or supersede E-SIGN’s electronic contracting provisions if it provides alternative procedures or requirements for the use or acceptance of electronic records or signatures, is consistent with the federal law, does not require or accord greater legal status or effect to a specific technology, and specifically references the federal act.

UETA

The Uniform Electronic Transactions Act (UETA) provides uniform rules governing electronic commerce transactions. It establishes a legal foundation for the use of electronic communications in transactions where the parties have agreed to conduct business electronically. It validates the use of electronic records and signatures and places electronic and paper-based commerce on the same legal footing.

PA 04-66—sHB 5293

Judiciary Committee

AN ACT CONCERNING DUAL ARRESTS IN FAMILY VIOLENCE CASES

SUMMARY: This act creates an exception to the general requirement for peace officers to arrest anyone they suspect has committed a family violence crime. It

relieves an officer of his duty to arrest any party that he reasonably believes used force only as a means of self-defense against family violence. The procedures or criteria for making this determination should be included in each law enforcement agency’s operational guidelines for arrest policies in family violence incidents, as required by law.

EFFECTIVE DATE: October 1, 2004

PA 04-78—HB 5561

Judiciary Committee

AN ACT CONCERNING SERVICE OF PROCESS IN CERTAIN LAND USE APPEALS

SUMMARY: By law, service of process in most civil actions against a town, city, or borough board, commission, department, or agency is made by serving two copies on the town, city, or borough clerk. The clerk keeps one copy and forwards the other to the affected board, commission, department, or agency.

Beginning October 1, 2004, this act specifies that service of process must be made in this manner for appeals to the Superior Court from decisions of a (1) municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals, inland wetlands agency, or other land use board or commission or (2) a municipal chief elected official or his designee for certain littering or dumping violations. Under prior law, service in these actions was made by leaving a copy with the municipal clerk and with or at the place of abode of the board chairman or clerk.

By law, service provides legal notice of the appeal and does not make the municipal clerk or board chairman or clerk a necessary party to the appeal.

EFFECTIVE DATE: October 1, 2004

PA 04-93—SB 290

Judiciary Committee

AN ACT CONCERNING PARTITION ACTIONS

SUMMARY: By law, the Superior Court may order the sale of property owned by two or more people or entities, followed by a division of the proceeds, when one of the owners asks it to do so and the court determines it will promote the owners’ interests.

The act gives the court an additional option, allowing it to divide the property equitably among some of the owners and order the payment of just compensation to the other owner or owners who have only a minimal ownership interest in the property if it will better promote the owners’ interests. The court may

do so only if it determines that selling the property and dividing the proceeds will not promote the owners' interests.

EFFECTIVE DATE: October 1, 2004

PA 04-94—sSB 293

Judiciary Committee

Appropriations Committee

**AN ACT CONCERNING JUDICIAL REVIEW
UNDER THE UNIFORM ADMINISTRATIVE
PROCEDURE ACT**

SUMMARY: This act prohibits parties from appealing to the Superior Court final decisions entered in Department of Correction or Parole Board hearings by exempting these hearings from the Uniform Administrative Procedure Act's (UAPA) definition of contested cases.

The UAPA generally defines "contested cases" as those where a statute requires an agency to determine a party's legal rights, duties, or privileges after a hearing. The act expands the authority for these administrative hearings to include regulations and specifies that state statutes are the only other authority.

EFFECTIVE DATE: October 1, 2004

PA 04-99—SB 556

Judiciary Committee

**AN ACT CONCERNING CERTAIN BUSINESS
ORGANIZATION MERGERS AND
DISSOLUTION OF CERTAIN NONSTOCK
CORPORATIONS**

SUMMARY: The law allows one or more domestic corporations to merge with a domestic or foreign corporation or other entity pursuant to a merger plan. This act allows domestic corporations to merge with more than one corporation or other entity.

The law allows a nonstock corporation to dissolve by delivering to the secretary of the state for filing a certificate of dissolution outlining certain information, including the corporation's name and the date dissolution was authorized. The act requires that, if the board of directors authorized the dissolution without member approval, the certificate include a statement that the board approved the dissolution and that member approval was not required.

By law, domestic limited partnerships may merge with one or more limited partnerships or other entities, and a limited liability company (LLC) may merge or consolidate into or with one or more LLCs or other entities. The act specifies that this authority to merge or

consolidate applies to foreign as well as domestic LLCs and limited partnerships.

EFFECTIVE DATE: Upon passage

PA 04-100—sSB 596

Judiciary Committee

**AN ACT CONCERNING IMPROVED
PROCESSING OF CHILD SUPPORT CASES**

SUMMARY: This act (1) lengthens never-married parents' child support obligations under some circumstances, (2) increases Judicial Department support enforcement officers' independent authority, (3) creates a mechanism for suspending or modifying child support orders when a probate or juvenile court places a child with a different guardian or custodian, and (4) allows family support magistrates to issue habeas corpus writs to secure the testimony of incarcerated parents in court.

EFFECTIVE DATE: October 1, 2004, except the guardianship transfer provisions, which are effective upon passage.

**CHILD SUPPORT OBLIGATIONS OF PARENTS
WHO NEVER MARRIED**

The act extends the child and medical support obligations of parents who never married by up to one year. Currently, their support obligations end on the child's 18th birthday. Under the act, they must continue to support unmarried, full-time high school students living with one of them until graduation or age 19, whichever occurs first. Parents whose marriages are dissolved or annulled are already subject to this requirement.

DUTIES OF SUPPORT ENFORCEMENT OFFICERS

The act gives court support enforcement officers more authority to act independently. It authorizes them to issue orders for the arrest and presentation in court (*capias mittimus*) of a parent or witness who disregards an order to appear in court, rather than ask the court clerk to issue them. It authorizes them to review support orders involving federal welfare (TANF) recipients as required by federal child support enforcement program statutes or regulations, rather than only at the state Bureau of Child Support Enforcement's direction. It also permits them to initiate child support modification proceedings in non-TANF cases whenever they receive information about a substantial change in a parent's financial circumstances, rather than only at a parent's request.

GUARDIAN OR CUSTODIAN CHANGES

When a court transfers custody or guardianship of a child subject to a support order without changing the support order's terms, the act makes the transfer sufficient to either suspend or modify them. The order is suspended when the transfer is to the parent ordered to pay the support. Otherwise, the transfer operates to substitute the new guardian or custodian as the support order's payee.

PA 04-114—HB 5558

Judiciary Committee

AN ACT CONCERNING THE CONVEYANCE OF INTERESTS IN REAL PROPERTY TO LAND TRUSTS AND OTHER NONPROFIT LAND-HOLDING ORGANIZATIONS

SUMMARY: This act requires any deed or other instrument that conveys an interest in real estate to a nonprofit landholding organization after September 30, 2004 to be signed by a duly authorized officer of the organization to indicate the organization's acceptance. The act specifies that a conveyance includes a conservation restriction or easement.

The act subjects violators to a civil penalty of \$500. It also makes a violation an unfair or deceptive trade practice.

A nonprofit landholding organization is a nonprofit corporation incorporated under Connecticut law, having as one of its principal purposes the conservation and preservation of land. It includes a land trust.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Conservation Restriction

CGS § 47-42a defines "conservation restriction" as a limitation, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the land owner, or in any order of taking such land, whose purpose is to retain land or water areas predominantly in their natural, scenic, or open condition or in agricultural, farming, forest, or open space use.

Unfair or Deceptive Trade Practice

The Connecticut Unfair Trade Practices Act prohibits businesses from engaging in unfair and deceptive acts or practices. It authorizes the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate

complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows people to sue. Courts may award actual and punitive damages, costs, and reasonable attorneys' fees; issue restraining orders; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

PA 04-121—sHB 5296

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING A SEXUAL ASSAULT VICTIMS ACCOUNT

SUMMARY: This act establishes a separate, nonlapsing sexual assault victim account in the General Fund. Beginning July 1, 2005, money in the account, including investment earnings, must be provided annually to the Department of Public Health in legislatively determined amounts to fund crisis services that are available to the state's sexual assault victims. Account funds cannot substitute for federal or state funds available for this purpose.

The account is funded with a new \$151 fine on anyone convicted of, or who pleads guilty or no contest to, a sexual assault crime or risk of injury to a minor involving sexual contact and any other moneys required by law to be deposited in it.

EFFECTIVE DATE: July 1, 2004

PA 04-123—HB 5439

Judiciary Committee

AN ACT CONCERNING THE CHIEF STATE'S ATTORNEY

SUMMARY: This act allows the chief state's attorney to appear in court to represent the state when the state's attorney for the judicial district consents, instead of requiring an appointment by the Criminal Justice Commission based on (1) a state's attorney application, (2) good cause, and (3) the unavailability of another state's attorney.

As under prior law, the chief state's attorney can represent the state in place of a state's attorney in an investigation or criminal proceeding if the chief state's attorney finds clear and convincing evidence of the state's attorney's misconduct, conflict of interest, or malfeasance. If the state's attorney objects, the

Criminal Justice Commission must decide who represents the state.

EFFECTIVE DATE: October 1, 2004

PA 04-124—HB 5442

Judiciary Committee

Appropriations Committee

**AN ACT CONCERNING PAYMENT BY THE
DIVISION OF CRIMINAL JUSTICE OF THE
EXPENSES OF WITNESSES**

SUMMARY: This act expands the expenses that the Division of Criminal Justice must pay from its budget to include those of investigations as well as prosecutions. It also expands the minimum covered as prosecution or investigation expenses to include expenses, rather than just fees, of witnesses, other than police, called by the prosecution. The law already includes payment of witness fees for police officers and others summoned by the prosecution.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Witness Fees and Expenses

The law sets fees and expenses for witnesses in a number of circumstances, including the following.

1. Witnesses summoned by the state receive 50 cents a day and the same per-mile rate for travel to the place of trial as is paid state employees for travel.
2. Regular or supernumerary police and regular, volunteer, or substitute firefighters who are summoned to testify in criminal proceedings and are not compensated by their town, city, or borough employer are paid \$40 (PA 04-232 increases this to \$100) plus the same mileage rate for travel as paid other witnesses in criminal proceedings.
3. A person confined in prison because a state's attorney alleges he will be a material witness in a pending criminal proceeding receives \$2 per day of confinement in addition to his fees as a witness.
4. The court determines a reasonable fee, in place of other witness fees, when a practitioner of the healing arts, dentist, registered nurse, advanced practice nurse, licensed practical nurse, or real estate appraiser gives expert testimony, including by deposition.
5. The chief state's attorney, when necessary to obtain testimony of a witness who resides outside the state in a criminal prosecution, can

pay the witness a reasonable sum for his time and expense in going to, attending, and returning from court and may also pay a reasonable sum for the expense of procuring his attendance or procuring a document from outside the state that is necessary as evidence in a trial.

6. A material witness in another state commanded by that state's court to testify in Connecticut, receives \$5 per day of travel or court attendance plus the same per-mile rate paid state employees for travel.
7. A witness at risk of harm can receive protective services that include housing expenses; basic living expenses including food, transportation, utility costs, and health care; and other services as needed and approved by the chief state's attorney.

PA 04-127—sHB 5594

Judiciary Committee

Transportation Committee

AN ACT CONCERNING COURT OPERATIONS

SUMMARY: This act makes a number of changes in court operations laws. It:

1. requires the transportation commissioner, rather than a Superior Court clerk, to notify landowners when the Department of Transportation has initiated condemnation proceedings affecting their land;
2. requires a court, when transferring 14- and 15-year olds to adult court, to hold private court proceedings in areas away from adult criminal proceedings until the transfer is final;
3. allows landlords to file eviction suits against week-to-week tenants and discharged farm workers, servants, and other employees occupying employer-provided housing three days after giving them notice to quit the premises, adopting the timeframe already designated for month-to-month tenancies;
4. requires courts to enter default judgments in eviction proceedings whenever a party fails to file a timely pleading and the opposing party requests the judgment;
5. allows people cited for vehicle noise and exhaust infractions or importing invasive plants to pay their fines through the centralized infraction bureau;
6. allows arrest warrants issued for violations of probation or release conditions to be entered into the court's centralized computer system and makes the entry (a) prima facie evidence

that the warrant was issued and (b) an authorization to arrest the subject; and

7. permits civil plaintiffs to file suit in the Danbury judicial district, rather than in Litchfield only, if any party resides in New Milford or the property subject to the suit is located there.

EFFECTIVE DATE: October 1, 2004

PA 04-128—HB 5597

Judiciary Committee

AN ACT CONCERNING TERMINATION OF PARENTAL RIGHTS BASED ON CONSENT

SUMMARY: This act shortens, from 30 to 20 days, the period within which a court must hold a hearing on a petition to terminate parental rights when a parent has consented to the termination. And it shortens to 20 days the time limit for appealing probate court orders granting such petitions.

Under prior law, such parents who attended the hearing or waived their right to do so had 30 days to appeal and those who did not attend and were not legally notified of the hearing or their right to request one had 90 days.

EFFECTIVE DATE: October 1, 2004

PA 04-130—sHB 5603

Judiciary Committee

AN ACT CONCERNING SEXUAL ASSAULT OF YOUTHS BY PERSONS STANDING IN A POSITION OF POWER, AUTHORITY OR SUPERVISION

SUMMARY: This act makes it second-degree sexual assault for an adult to have sexual intercourse and fourth-degree sexual assault for him to have sexual contact with a person under age 18 if the minor participates in a program or activity and the adult's professional, legal, occupational, or volunteer status gives him power, authority, or supervision over the minor. Under the act, an adult is anyone age 20 or older.

Second-degree sexual assault is a class C felony unless the victim is under age 16 in which case it is a class B felony. Fourth-degree sexual assault is a class A misdemeanor unless the victim is under age 16 in which case it is a class D felony (see Table on Penalties).

EFFECTIVE DATE: October 1, 2004

PA 04-132—HB 5356

Judiciary Committee

AN ACT CONCERNING THE CONVEYANCING OF REAL PROPERTY

SUMMARY: This act:

1. authorizes town clerks to record a certified copy of a deed or other instrument affecting real estate in their town, when the original was recorded in another town;
2. establishes statutory forms of acknowledgment for limited liability companies and registered limited liability partnerships;
3. clarifies certain voting requirements in condominiums and other common interest communities concerning the use of, or the boundaries between, units and common elements;
4. for mortgages executed and recorded after September 30, 2004, increases from \$1,000 to \$5,000 the maximum amount a mortgagee (lender) can add to the mortgage debt for advancements for repairs, alterations, or improvements; and
5. allows someone who has a contract to buy real estate to obtain a purchaser's lien on it by recording on the land records of the town where the property is located a notice of contract that contains certain information rather than recording the contract itself.

EFFECTIVE DATE: October 1, 2004

CERTIFIED COPIES OF DEEDS

The act authorizes town clerks to record a copy of a deed or other instrument affecting real estate located in their town that is recorded in the land records of another town. They may do so only if the other town clerk certifies that the copy is a true copy of the deed or instrument recorded in that town. When the copy is recorded, it has the same legal effect as if the original had been recorded.

CONDOMINIUMS

Under prior law, if the declaration of a pre- or post-1984 condominium or other common interest community contained a provision requiring that amendments on unit use, boundary relocation between units and common elements, or extension or creation of development rights needed the vote or agreement of unit owners holding 80% or more of the association votes, an amendment was deemed approved if:

1. unit owners with at least 80% of the votes approved it,
2. no unit owner voted against it, and
3. unit owners who had the right to vote but had not done so were notified of the proposed amendment and the association received no written objection within 30 days.

The amendment also was approved, even if one or more unit owner objects, if, pursuant to a legal proceeding brought by the association in Superior Court against all objecting unit owners, the court finds that the objecting parties do not have a unique minority interest different in kind from the interests of other unit owners who the declaration's voting requirements were intended to protect.

The act specifies that this procedure applies only if the provision requires a vote of higher than 80% and not if the provision requires an 80% vote.

PURCHASER'S LIEN

By law, a purchaser's lien is created for the amount of the deposit paid pursuant to, and stated in, a contract for conveying land by recording the contract in the land records of the town in which the land is situated. To create the lien, the contract must be executed by the owner and buyer, witnessed and acknowledged in the same manner as required for a deed, and describe the particular land to which it refers. The purchaser's lien has priority over any other liens and encumbrances that originate after the contract is recorded. A purchaser's lien may be foreclosed in the same manner as a mortgage. Transfer of title of the land to the purchaser constitutes a release and discharge of the lien.

The act allows someone also to obtain a purchaser's lien by recording a notice of contract that contains certain information in the land records of the town where the property is located. The notice must be executed by the owner and buyer, witnessed and acknowledged in the same manner as a deed, and describe the particular property to be purchased.

The notice must also include the:

1. owner's and buyer's address;
2. date provided in the contract for the performance of the contract or, if this date is not provided, the date on which the contract was executed; and
3. deposit amount.

The act specifies that it may not be interpreted to affect the validity of any purchaser's lien created before October 1, 2004.

The act makes the procedures that currently apply for discharging a purchaser's lien created by recording the contract apply to a purchaser lien created by filing a notice of contract.

BACKGROUND

Common Interest Community

A common interest community is real property described in a declaration with respect to which a person, by virtue of owning a unit, must pay for property taxes, insurance premiums, or maintenance or improvements of any other real property. A common interest community can be a condominium, cooperative, or planned community.

A condominium generally involves individually owned units in a multi-unit complex in which the owner acquires an undivided proportionate interest in areas and facilities that are common to all unit owners. These can range from the building's lobby, grounds, and electrical and mechanical systems to recreational facilities, such as swimming pools and tennis courts. In a "cooperative," an association owns all of the real property and each association member is entitled to the exclusive possession of a unit. A "planned community" is another arrangement where, by virtue of owning a unit, an individual must pay for real estate taxes, insurance premiums, or maintaining or improving of any real property other than the unit.

The main difference between a planned community and a condominium is that in the former, common areas are held in the name of the homeowners' association instead of being divided among the unit owners as tenants in common.

PA 04-135—sHB 5657

Judiciary Committee

AN ACT CONCERNING HATE CRIMES

SUMMARY: This act makes crimes committed maliciously and with intent to intimidate or harass a person because of the person's actual or perceived disability or gender identity or expression, crimes of intimidation based on bigotry or bias. The bigotry or bias crimes already applied to conduct based on a person's actual or perceived race, religion, ethnicity, or sexual orientation.

The act defines "disability" as a physical or mental disability or mental retardation. It defines "gender identity or expression" as a person's gender-related identity, appearance, or behavior, whether or not it is different from what is traditionally associated with the person's assigned sex at birth.

By adding these crimes to the bigotry or bias crimes, the act also:

1. makes them subject to the persistent offender statute, which allows the court to sentence a person convicted for a second time of certain bias crimes to the next highest sentence class if the offender's character and history and the nature and circumstances of the crime indicate that the increased penalty best serves the public interest;
2. allows offenders to participate in the hate crimes diversion program as a condition of accelerated rehabilitation;
3. allows a court, as a condition of probation or conditional discharge, to require an offender to participate in an anti-bias crime education program;
4. requires police to monitor, record, and classify these crimes;
5. adds them to the charge of the Hate Crimes Advisory Committee established by the chief state's attorney which (a) coordinates federal, state, and local efforts to enforce bigotry and bias criminal laws and increase community awareness, reporting, and combating of these crimes and (b) makes recommendations on training police officers about these crimes;
6. adds them to the training on bigotry and bias crimes that must be part of basic or review training programs conducted or administered by the State Police, Police Officer Standards and Training Council, or municipal police departments; and
7. gives a person injured by conduct that results from these crimes a civil action for triple damages for injuries (the court can also award other relief and reasonable attorney's fees).

EFFECTIVE DATE: October 1, 2004

BIGOTRY OR BIAS CRIMES

The act adds crimes committed maliciously and with intent to intimidate or harass a person because of the person's actual or perceived disability or gender identity or expression, to the three bigotry or bias crimes.

1. A person commits the first-degree crime if he causes serious physical injury to that person or a third person. This is a class C felony (see Table on Penalties).
2. A person commits the second-degree crime if he (a) makes physical contact with the victim; (b) damages, destroys, or defaces property; or (c) threatens to do either of these things and the victim has reasonable cause to believe he will carry out the threat. This is a class D felony.
3. A person commits the third-degree crime if he (a) damages, destroys, or defaces any property

or (b) threatens to do so or advocates or urges another person to do so and gives the victim reasonable cause to believe the act will occur. This crime also applies if the person intends to intimidate or harass a group of people. This is a class A misdemeanor.

DISABILITY

The act defines disability as:

1. a mental disability—one or more mental disorders as defined in the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders;"
2. a physical disability—a chronic physical handicap, infirmity, or impairment, whether congenital or from bodily injury, organic process or change, or illness, including blindness, epilepsy, deafness, hearing impairment, or reliance on a wheelchair or other remedial appliance or device; or
3. mental retardation—significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

PA 04-139—sHB 5043

Judiciary Committee

AN ACT INCREASING THE PENALTIES FOR ENTICING A MINOR AND IMPORTING OR POSSESSING CHILD PORNOGRAPHY

SUMMARY: This act enhances penalties for offenses involving child pornography and using the Internet to entice minors to engage in sexual activity. It:

1. refines the definition of "child pornography" and adds definitions for "sexually explicit conduct" and "visual depiction";
2. creates new affirmative defenses for possession prosecutions;
3. increases, from one to three, the number of visual depictions a person must possess to be convicted of importing child pornography and increases criminal penalties for this crime;
4. creates graduated offense levels and penalties based on the amount of child pornography possessed;
5. requires sentences of those convicted of child pornography and enticement offenses to include between 10 and 35 years of probation, rather than up to five years as under prior law;
6. bars people charged with (a) second- or third-degree possession of child pornography or (b)

- enticing a minor, from the pretrial Accelerated Rehabilitation (A/R) program;
- 7. requires a 10-year period of sex offender registration and submission of DNA samples for people convicted of enticement (including those convicted before the act's effective date) and the newly created child pornography possession offenses;
- 8. directs the commissioner of the Department of Correction to deny computer access to incarcerated offenders convicted of crimes requiring sex offender registration; and
- 9. adds importing and possessing child pornography to the list of offenses that can serve as the basis for nuisance abatement actions.

The act also establishes a task force to study and make recommendations for legislation concerning law enforcement access to wire and electronic communications and subscriber records.

It repeals statutes criminalizing comic books that (1) primarily portray physical torture or brutality, horror, or terror or (2) fail to include the publisher's name and address in the publication.

EFFECTIVE DATE: October 1, 2004, except for the prison computer restrictions, which are effective on passage and the increased criminal classification for enticement crimes, which are effective July 1, 2004.

CHILD PORNOGRAPHY

Definitions

Prior law restricted child pornography to material involving a live performance or photographic or other visual reproduction of a live performance which depicts a minor in a prohibited sexual act. The act, instead, defines it as any visual depiction, including any photograph, film, videotape, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct. The production of the depiction must involve use of a person engaging in such conduct who was under age 16 at the time of its creation. It specifies that the trier of fact must decide disputes about the actor's age.

Sexually Explicit Conduct. The act defines "sexually explicit conduct" as actual or simulated:

- 1. sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal physical contact between persons of either sex or with an artificial genital;
- 2. bestiality;
- 3. masturbation;
- 4. sadistic or masochistic abuse; or

- 5. lascivious exhibition of the genitals or pubic area of any person.

Visual Depiction. Under the act, visual depictions include undeveloped film, videotape, and information of any kind in any form, including computer software and encrypted data, that is capable of conversion into a visual image.

Importing Child Pornography

Prior law made it a class C felony (see Table on Penalties) to knowingly import or cause to be imported any amount of child pornography of known content and character into the state when the importer intends to promote child pornography. The act requires importation of at least three visual depictions and eliminates the prior law's rebuttable presumption that importation of two or more copies of any publication containing child pornography indicates the actor's intent to promote child pornography. The act also raises the classification of this crime to a class B felony.

Possessing Child Pornography

Prior law made it a class D felony to knowingly possess any child pornography. The act creates graduated offense levels depending on the number of visual depictions involved. Possessing 50 or more depictions is a class B felony. Possessing 20-49 depictions or fewer than 20 are class C and D felonies, respectively.

Affirmative Defenses

Prior law exempted possession of photographic or other visual reproductions of a nude minor for a bona fide artistic, medical, scientific, educational, religious, governmental, or judicial purpose from the law against possessing child pornography. The act, instead, makes these circumstances affirmative defenses that defendants must establish by a preponderance of evidence at trial. It also permits defendants to avoid conviction by establishing, by a preponderance of evidence, that they:

- 1. possessed fewer than three visual depictions of child pornography;
- 2. did not knowingly buy, procure, solicit, or request them or knowingly take any other action to cause them to come into their possession; and
- 3. promptly and in good faith, and without retaining or allowing any person other than a law enforcement agency to access any visual depiction or copy, took reasonable steps to destroy the materials or reported the matter to a

law enforcement agency and gave it access to all visual depictions.

Nuisance Abatements

The act adds child pornography possession and importation to the nuisance abatement statutes, allowing courts to order abatement of residential or commercial properties when there have been three or more arrests or arrest warrants issued indicating a pattern of criminal activity. Among other things, courts can order the property closed until the nuisance is eliminated.

ENTICING A MINOR

The act also increases, by one level, the criminal penalties for enticing a minor over the Internet. A person commits this crime by using an interactive computer service to knowingly persuade, induce, entice, or coerce anyone under age 16 to engage in prostitution or criminal sexual activity. Under prior law, first, second, and subsequent offenses were class A misdemeanors, class D felonies, and class C felonies, respectively. The act makes them class D, C, and B felonies, respectively. It also subjects offenders to DNA sampling for inclusion in the Department of Public Safety's DNA Data Bank and to a 10-year period of sex offender registration.

It defines "interactive computer service" as any information services, system, or access software provider that provides or enables computer access by multiple users to a computer server, including those offered by libraries and schools.

TASK FORCE

The act establishes a task force to study procedures under state and federal law for Connecticut law enforcement agencies to obtain subscriber records and the contents of electronic or wire communications kept by electronic communication services (i.e., any service which provides users the ability to send or receive wire or electronic communications) and remote computer services (i.e., services that provide the public computer storage or processing services by means of an electronic communications system).

Composition

The task force consists of the public safety commissioner, chief state's attorney, chief public defender, chief court administrator, chairmen of the Judiciary and Public Safety committees, or their designees, and a representative designated by the Connecticut Police Chiefs Association.

Study Scope and Reports

The study must include:

1. methods by which law enforcement agencies may require disclosure of subscriber records and electronic or wire communications from providers, such as using search warrants, court orders, or administrative subpoenas;
2. standards for issuing court orders or subpoenas;
3. procedures for notifying subscribers when their records or the contents of their communications have been sought from a provider;
4. procedures allowing a provider or subscriber to challenge a subpoena or court order;
5. procedures to protect the privacy interests of subscribers in wire and electronic communications; and
6. remedies and sanctions for unauthorized access to or disclosure of subscriber records or communications.

The task force must report its findings and recommendations, including any recommendations for legislation, to the Judiciary Committee by January 5, 2005.

PA 04-142—sSB 230

Judiciary Committee

AN ACT CONCERNING PROBATE COURT ADMINISTRATION AND PROCEEDINGS AND INCREASING THE NUMBER OF JUSTICES OF THE PEACE IN MERIDEN

SUMMARY: By law, a probate judge may not appear as an attorney in any contested matter in probate court. The act specifies that a matter is contested when any party informs the court of any objection or opposition whether or not it appears to have merit.

By law, a probate court may transfer certain contested cases regarding minors to another probate judge appointed by the probate court administrator from a panel of qualified probate judges who specialize in children's matters. The act eliminates the requirement that, in such cases, the hearing be held in the original probate court, except upon agreement of all parties and the Department of Children and Families, where applicable. It also extends the transfer authority to uncontested cases.

The act (1) authorizes probate courts to issue orders to disclose medical information relevant to the determination of the matters before them and (2) and makes such information filed with the court confidential. An order may require the disclosure of

such information to specified people and entities. It also authorizes probate courts to order disclosure of medical information required in connection with an application for involuntary representation, appointment of a temporary conservator, and the review of a conservatorship, which must occur every three years. The act makes any medical report filed with the court in connection with such a case confidential.

The act also allows a fiduciary that is removed for any reason, not just for cause, to appeal to the Superior Court.

Finally, the act increases the number of justices of the peace in Meriden from 23 to 36.

EFFECTIVE DATE: October 1, 2004, except for the increase in the number of justices of the peace, which is effective upon passage and the provision on removal of fiduciary, which is effective July 1, 2004 and applies to motions, applications, and complaints filed on or after that date.

DISCLOSURE OF MEDICAL INFORMATION

Authority

The act authorizes the probate court to order disclosure of medical information relevant to the determination of a matter before it. The order may require disclosure to (1) the court; (2) any executor, administrator, conservator, guardian or trustee appointed by the court; (3) any attorney representing the individual who is the subject of the information; (4) any guardian ad litem for the individual who is the subject of the information; (5) any physician, psychiatrist, or psychologist ordered by the court to examine such individual; or (6) any other party to the proceeding the court determines require it in the interests of justice. The act makes any medical information filed with the court confidential.

Involuntary Representation Hearings

By law, at any hearing for involuntary representation, the court must receive evidence about the condition of the respondent, including a written report or testimony by one or more physicians licensed to practice medicine in Connecticut who have examined the respondent within 30 days preceding the hearing. The report or testimony must contain specific information about the disability and the extent of its incapacitating effect.

The act authorizes the probate court to order disclosure of the medical information required in connection with such an application and makes any medical report filed with the court in connection with such a case confidential.

Appointment of a Temporary Conservator

By law, a temporary conservator may not be appointed unless a report is presented to the judge, signed by a physician licensed to practice medicine or surgery in Connecticut, stating (1) that the physician has examined the person and the date of such examination, which may not be more than three days before the date of presentation to the judge; (2) that it is the physician's opinion that the respondent is incapable of managing his affairs or of caring for himself; and (3) the reasons for the opinion.

The act authorizes the probate court to order disclosure of the medical information required in connection with such an application, and makes any medical report filed with the court in such cases confidential.

APPEAL TO SUPERIOR COURT REGARDING THE REMOVAL OF A FIDUCIARY

This act allows a fiduciary removed for any reason, not just for cause, to appeal to the Superior Court.

By law, a probate court may, upon its own motion or upon the application and complaint of certain people after notice and hearing, remove any fiduciary if:

1. the fiduciary becomes incapable of executing the trust, neglects to perform his duties, wastes the estate in his charge, or fails to furnish any additional or substitute probate bond ordered by the court;
2. lack of cooperation among cofiduciaries substantially impairs the administration of the estate;
3. the fiduciary is unfit, unwilling, or persistently fails to administer the estate effectively, and the court determines that removal of the fiduciary best serves the interests of the beneficiaries; or
4. there has been a substantial change of circumstances or removal of the fiduciary best serves the interests of all the beneficiaries and removal is not inconsistent with a material purpose of the governing instrument and a suitable cofiduciary or successor fiduciary is available.

The law prohibits a successor corporate fiduciary from being removed in such a manner as to discriminate against state banks or national banking associations. It also prohibits the removal of any consolidated state bank or national banking association or any receiving state bank or national banking association solely because it is a successor fiduciary.

BACKGROUND

Transfer of Contested Cases

Contested cases involve applications concerning the removal of a parent as guardian, termination of parental rights, temporary custody of a minor, reinstatement of a parent as a guardian, appointment or removal of a guardian or a coguardian, or the appointment of a temporary guardian.

Related Legislation

PA 04-159 creates a pilot regional probate court for children's matters.

PA 04-147—sHB 5443

Judiciary Committee
Public Safety Committee

AN ACT CONCERNING THE DIVISION OF CRIMINAL JUSTICE

SUMMARY: This act names the annual training program for police chiefs "The John M. Bailey Seminar on New Legal Developments Impacting Police Policies and Practices." The Police Officer Standards and Training Council and State Police in conjunction with the Chief State's Attorney's Office and Connecticut Police Chiefs Association provide the program.

The act also explicitly authorizes Division of Criminal Justice inspectors to serve search warrants. They already did so as a matter of practice. The chief state's attorney and state's attorneys appoint inspectors to investigate crimes and they have the same arrest powers as state police officers. The law already authorized police officers and conservation officers, special conservation officers, and patrolmen enforcing certain laws to serve search warrants.

EFFECTIVE DATE: July 1, 2004 for the training program naming and October 1, 2004 for the service of search warrants.

PA 04-148—sHB 5444

Judiciary Committee

AN ACT CONCERNING THE TRANSFER TO JUVENILE COURT OF THE CASES OF CHILDREN CHARGED WITH CERTAIN SEXUAL OFFENSES

SUMMARY: This act permits criminal courts to transfer cases involving certain 14- and 15-year-olds accused of having sexual intercourse with a person

under age 13, a class A felony (see Table on Penalties), back to juvenile court. Prior law automatically transferred them to the regular criminal court docket if they were age 14 or 15 at the time of the offense and required that they be tried as adults. If convicted, they had to serve at least 10 years at an adult correction facility if the victim was under age 10 or at least five years if the victim was age 10, 11, or 12.

Children adjudicated delinquent by juvenile court judges for committing designated serious sexual offenses must be committed to the Department of Children and Families for up to four years, with the possibility of one 18-month extension if the court finds this is in the best interest of the child or community. They must be sent for at least the first year of their commitment to a residential treatment facility under contract with the department. Juvenile court records are generally confidential.

Only those cases in which the prosecutor files a transfer motion are eligible for transfer under the act. The prosecutor must file his motion within 10 working days of the child's arraignment, and the court must hold a hearing and issue its decision within 10 days of the filing date. Prior law limited this option to 14- and 15-year-olds charged with class B felonies.

EFFECTIVE DATE: October 1, 2004

PA 04-152—HB 5564

Judiciary Committee
Human Services Committee

AN ACT PROHIBITING THE PLACEMENT OF FEMALE JUVENILE OFFENDERS AT THE CONNECTICUT JUVENILE TRAINING SCHOOL

SUMMARY: This act prohibits the Department of Children and Families from placing girls in the Connecticut Juvenile Training School, mandating that the school house boys only. It directs the department to transfer any girls currently housed there to another appropriate facility within 90 days.

EFFECTIVE DATE: Upon passage

PA 04-155—sHB 5669 (VETOED)*Judiciary Committee**Appropriations Committee**Public Health Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING MEDICAL
MALPRACTICE INSURANCE REFORM**

SUMMARY: This act makes numerous changes to the laws dealing with civil litigation; insurance regulation and oversight; and the regulation, oversight, and disciplining of doctors. It also gives certain physicians a tax credit for a portion of their medical malpractice insurance premiums.

The act:

1. establishes a mandatory mediation program for medical malpractice lawsuits filed after the act becomes law, which the parties must use unless they agree to use an alternative dispute resolution program (§ 1);
2. requires, as a condition of filing a medical malpractice lawsuit or an apportionment complaint in such a lawsuit, that the plaintiff attach to his complaint a signed opinion of a similar health care provider showing there is a good faith belief that negligence has occurred (§ 2);
3. reduces the interest rate the court may award the plaintiff on an offer of judgment for medical malpractice causes of action that accrue after the act's effective date by reducing (a) from 12% to 8% the interest the court must add to the portion of the award up to twice the amount stated in the offer of judgment, and (b) from 12% to 4% the interest the court must add to the portion of the award that exceeds twice the amount stated in the offer of judgment (§ 8); and
4. allows the attorney fee schedule for contingency fees in medical malpractice cases to be waived only after the claimant's attorney convinces a judge that the case warrants deviation from the schedule, requires that the fee be calculated after any disbursements and costs for which the plaintiff is liable have been deducted, and prohibits fees greater than one-third of the damages awarded (§ 15).

It also (1) requires court review of the evidence in cases of \$1 million or more in noneconomic damages to determine if the award is excessive as a matter of law (§ 18); (2) gives plaintiffs more time, 60 days instead of 10, to accept a defendant's offer of judgment and allows courts to give plaintiffs and defendants up to an additional 120 days to accept an offer of judgment (§§ 8

& 9); and (3) eliminates the Medical Malpractice Screening Panel (§ 23).

Regarding insurance regulation and oversight, the act:

1. requires the Insurance Department to approve medical malpractice insurance rate changes for physicians, hospitals, advanced practice registered nurses, and physician assistants before they can take effect and requires the insurers either to offer a discount for those who use an electronic records system or demonstrate that its use does not reduce the risk (§ 13);
2. requires that specified relevant factors that may reduce rates be considered when establishing malpractice rates for physicians and surgeons, hospitals, advanced practice registered nurses, or physician assistants, including any reduction in risk from using electronic health record systems to establish and maintain patient records and verify patient treatment (§ 14);
3. beginning June 1, 2005, requires insurers give the insurance commissioner a closed claim report on each malpractice claim that they close that includes details about the insured and insurer, the injury or loss, the claims process, and the amount paid, excluding confidential information (§ 16);
4. requires the commissioner to compile and analyze the reported data and annually report on it to the Insurance and Real Estate Committee and the public (§ 16); and
5. requires each captive insurer that offers, renews, or continues insurance in Connecticut to provide certain information to the insurance commissioner in the same manner required for risk retention groups (§§ 21 and 22).

Regarding medical provider regulation and oversight, the act:

1. requires medical malpractice litigants to provide certain information to the Insurance Department and the Department of Public Health (DPH) and requires these agencies to make the information available to the public (§§ 3 & 4);
2. requires DPH and the Medical Examining Board to adopt guidelines for investigating complaints against physicians, and requires DPH to notify the physician and complainant when it decides not to investigate because of a lack of probable cause (§§ 3, 4, 5, and 10);
3. makes liability releases invalid until the attorney representing the paying party files an affidavit with the court that he has provided DPH and the insurance commissioner with the required information (§ 3);

4. requires DPH's annual report to the governor and Public Health Committee to include additional information such as the number of complaints filed against doctors and the number of malpractice lawsuit notices DPH received and did not investigate and why (§ 6);
5. requires DPH to develop protocols for accurate identification procedures hospitals and outpatient surgical facilities must use before surgery (§ 7);
6. requires doctors annually to provide certain information to DPH, including their malpractice insurer, policy number, area of specialization, and disciplinary actions and malpractice payments made in other jurisdictions, which they can do by including such information in their physician profile (§ 11);
7. requires DPH to report annually the number of doctors, by specialty, actively providing patient care (§ 12); and
8. requires the DPH commissioner to develop and implement a process to ensure DPH's continuing and coordinated focus on patient safety programs (§ 17).

The act gives a physician who resides in the state a state income tax credit for part of the medical malpractice insurance premiums he paid during the taxable year. The credit is applicable to tax years beginning January 1, 2004. The act funds the credit for FY 2004-05 by allocating funds from \$2 million being transferred to the General Fund from the Biomedical Research Trust Fund (§§ 19 & 20).

EFFECTIVE DATE: Upon passage, except the provision dealing with the duty of captive insurers to provide certain information to the insurance commissioner takes effect July 1, 2004; the tax credit provision takes effect July 1, 2004 and applies to taxable years beginning January 1, 2004; and the provision requiring data on closed cases takes effect January 1, 2005.

MANDATORY MEDIATION (§ 1)

The act establishes a mandatory mediation program for all medical malpractice lawsuits filed after the act becomes law to:

1. review the good faith certificate the complainant filed to determine whether there are grounds for a good faith belief that the defendant was negligent,
2. attempt to achieve a prompt settlement or resolution of the case, and
3. expedite ensuing litigation.

A medical malpractice case must be referred to mandatory mediation unless the parties have agreed to

refer the case to an alternative dispute resolution program. The court clerk must refer it to a Superior Court judge for mediation when the defendant files his answer. The mediation must occur as soon as is practicable but no later than 30 days after the answer is filed. The act specifies that mediation does not stay or delay the lawsuit or delay discovery.

At the mediation, the court must review the good faith certificate to determine if there are grounds for a good faith belief that the defendant was negligent in the claimant's care or treatment. If the court determines that the certificate is inadequate to permit such a determination, it may order the complainant to file a supplemental certificate within 30 days.

If the court determines that the certificate or supplemental certificate is inadequate to support a determination that there are grounds for a good faith belief that there has been negligence, it must order the party asserting the claim to post a \$5,000 cash or surety bond as a condition of continuing the case. The bond must be used to pay the other party's taxable costs if the case is not successfully prosecuted.

The act requires all parties to the case, together with a representative of each insurer that may be liable, to attend the mediation in person, unless the parties agree to a telephone conference or the court orders it.

If the mediation does not settle or conclude the case, the court must enter whatever orders are necessary to narrow the issues, expedite discovery, and help the parties prepare the case for trial.

The mediation requirement applies to all DPH-licensed health care providers (individuals or institutions) including doctors, surgeons, dentists, pharmacists, psychologists, and emergency medical technicians (see BACKGROUND for detailed list).

GOOD FAITH CERTIFICATE (§ 2)

The law prohibits filing malpractice lawsuits unless the attorney or claimant has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that the claimant received negligent care or treatment. The complaint or initial pleading must contain a certificate of the attorney or claimant that such reasonable inquiry resulted in a good faith belief that grounds exist for a lawsuit against each named defendant.

Under prior law, a good faith belief could be shown if the claimant or his attorney received a written opinion from a similar health care provider that there appeared to be evidence of medical negligence. But it also could be shown in some other way. The act instead requires a written signed opinion from a similar health care provider in order to show the existence of good faith. The opinion must include the reasons for concluding that medical negligence had occurred.

The act requires the claimant or his attorney to retain the original written opinion and attach a copy of it to the complaint, with the health care provider's name and signature removed.

The act imposes the same good faith certificate requirement on defendants who file an apportionment complaint against another health care provider as applies to the plaintiff. (An apportionment complaint is a defendant's claim in a medical malpractice lawsuit that another health care provider who the plaintiff did not make a defendant committed malpractice and partially or totally caused the plaintiff's damages. By filing the apportionment complaint, the defendant in essence makes the other health care provider a party to the plaintiff's lawsuit.) Under the act, if a plaintiff asserts a claim against a party added to the case by an apportionment complaint, he is not required to submit a certificate of good faith regarding that person.

The act makes the health care provider who provides the opinion immune from liability unless it is shown he acted with malice.

By law, the court may impose sanctions if a certificate was not made in good faith.

NOTICE OF LAWSUITS TO DPH AND INSURANCE DEPARTMENT (§ 3)

The act requires that upon filing a medical malpractice case against certain health care providers, the plaintiff or his attorney mail a copy of the complaint to DPH and the Insurance Department. The requirement applies to lawsuits filed against licensed physicians, chiropractors, natureopaths, dentists, podiatrists, optometrists, and psychologists. The receipt or review of a copy of a complaint may not be considered an investigation of the licensee by DPH or any examining board.

By law, anyone who pays damages in a medical malpractice case must notify DPH of the terms of the award or settlement and provide a copy of it and the underlying complaint and answer, if any. The act requires that the notification specify the portion attributable to economic damages and, if determined by the parties, the portion attributable to noneconomic damages. It also requires that (1) if there are multiple defendants, the information include how the award must be allocated and (2) the portion of the award attributable to the offer of judgment law.

The act requires that (1) the person who pays damages also provide this information to the Insurance Department without identifying the parties to the claim and (2) DPH send this information to the state board of examiners that oversees the health care provider who was a defendant in the lawsuit.

By law, DPH must review all medical malpractice awards and settlements to determine whether further

investigation or disciplinary action against the providers involved is warranted. The act requires DPH to review all malpractice complaints as well. It requires that, beginning October 1, 2004, DPH conduct its reviews according to guidelines it adopts to determine the basis for further investigation or disciplinary action.

The act requires the public health and insurance commissioners to develop systems in their respective agencies to collect, store, use, interpret, report, and provide public access to the information. It requires each commissioner to report the details of these systems to the Public Health and Insurance and Real Estate committees by October 1, 2004.

Release of Liability

By law and practice, people receiving a settlement in a malpractice claim sign a liability release to the person or entity paying the settlement. The act makes such releases in connection with settlements with health care providers invalid until the attorney for the entity making payment or, if no such entity exists, the attorney for the party, files with the court an affidavit stating that he has provided the information the act and law require to DPH and the Insurance Department. The requirement applies to claims against licensed physicians, chiropractors, natureopaths, dentists, podiatrists, optometrists, and psychologists.

DPH INVESTIGATION GUIDELINES CONCERNING COMPLAINTS AGAINST PHYSICIANS (§ 4)

By law, the DPH commissioner, with the Connecticut Medical Examining Board's advice and assistance, may establish regulations to carry out its oversight and regulatory duties. The act requires the commissioner, by July 1, 2004, to adopt regulations that establish:

1. guidelines for screening complaints that physicians may be unable to practice medicine with reasonable skill and safety to determine which complaints it will investigate;
2. guidelines to determine the order in which complaints will be investigated;
3. a system for conducting investigations to ensure prompt action when it appears necessary;
4. guidelines to determine when an investigation should be broadened to include sampling patient records to identify patterns of care, reviewing office practices and procedures, reviewing performance and discharge data from hospitals and managed care organizations, and additional interviews of patients and peers; and

5. guidelines to protect and ensure the confidentiality of patient and provider identifiable information when an investigation is broadened.

DISCIPLINARY GUIDELINES AND HEARING PROCEEDINGS AGAINST DOCTORS (§ 5)

The 15-member Connecticut Medical Examining Board may restrict, suspend, or revoke the license of a physician or limit his right to practice for certain misconduct. The act requires that, by July 1, 2004, the board, with DPH's assistance, adopt regulatory guidelines for use in the disciplinary process. The guidelines must include, but need not be limited to (1) identification of each type of violation; (2) a range of penalties for each type of violation; (3) additional optional conditions that the board may impose; (4) identification of factors the board must consider to determine if the maximum or minimum penalty should apply; (5) conditions, such as mitigating factors or other facts, that the board may consider in allowing deviations from the guidelines; and (6) a requirement that the reason for any deviation from the guidelines must be identified.

By law, the board must refer all statements of charges DPH files with it to a hearing panel within 60 days of receiving them. Under prior law, the three-member medical hearing panel had to include a board member and a public member. The act requires instead that one member must be a similar health care provider to the person who is the subject of the complaint and two must be public members. It also requires that at least one of the three members be a Medical Examining Board Member. The public members may be board members or selected from the list of 18 people established by the DPH commissioner.

By law, the panel must conduct a hearing on contested cases. It must file a proposed final decision with the board within 120 days of receiving the case from the board. The board may, for good cause, vote to extend this deadline. The act requires the DPH commissioner to conduct the hearing if the panel has not done so within 60 days of the date the board refers the statement of charges. The hearing must be conducted according to DPH regulations governing contested cases. The act requires the commissioner to file a proposed final decision with the board within 60 days after the hearing. The board, for good cause, may vote to extend the filing deadlines. The act does not specify whether the board must accept the commissioner's decision.

DPH ANNUAL REPORTS OF DISCIPLINARY ACTIVITIES (§ 6)

By law, DPH must file with the governor and Public Health Committee an annual report of its disciplinary activities, which must include certain information. The act requires that the report specify (1) the number of petitions and lawsuit notices not investigated and the reasons why, (2) the outcome of the hearings held on petitions and notices DPH investigated, and (3) the timeliness of action taken on petitions and notices considered to be a priority.

PRE-SURGICAL PROTOCOLS (§ 7)

The act requires DPH to develop protocols for accurate identification procedures that hospitals and outpatient surgical facilities must use before surgery. The protocols must include (1) procedures to identify the patient, surgical procedure to be performed, and body part on which it is to be performed and (2) alternative identification procedures in urgent or emergency circumstances or where the patient cannot speak or is comatose, incompetent, or a child. After October 1, 2004, no hospital or outpatient surgical facility may anesthetize a patient or perform surgery unless the protocols have been followed.

The act requires that, by October 1, 2004, DPH must report to the Public Health Committee on the protocols it develops.

OFFER OF JUDGMENT BY PLAINTIFFS (§ 8)

By law, the plaintiff in a contract case or a case seeking money damages may, up to 30 days before trial, file with the court clerk a written "offer of judgment" to settle the claim for a specific amount. After trial, the court must examine the record to determine whether the plaintiff made an offer of judgment that the defendant failed to accept. If it determines that the plaintiff recovered an amount equal to or greater than the sum stated in his offer of judgment, the court must add 12% annual interest.

By law, a defendant has 60 days to file with the clerk an acceptance of the offer. The act allows the court to grant the defendant one or more extensions of up to 120 additional days to file an acceptance.

The act changes the interest rate the court may award with respect to an offer of judgment for medical malpractice cases that accrue after its effective date. It does so by reducing (1) from 12% to 8% the interest the court must add to the portion of the award up to twice the amount stated in the offer of judgment and (2) from 12% to 4% the interest the court must add to the portion of the award that exceeds twice the amount stated in the offer.

This change applies to medical malpractice lawsuits against any person, corporation, facility, or institution licensed by Connecticut to provide health care or professional services or an officer, employee, or agent thereof acting in the course and scope of his employment.

OFFER OF JUDGMENT BY DEFENDANTS (§ 9)

By law, in any contract case or case seeking money damages, the defendant may, up to 30 days before trial, file a written offer of judgment with the court clerk to settle the case for a specific amount. The act gives the plaintiff 60 instead of 10 days after being notified by the defendant of his offer to accept it. It also authorizes the court to grant the plaintiff one or more extensions up to 120 additional days for good cause. By law, if the plaintiff recovers less than the offer of judgment, he must pay the defendant's costs accruing after he received the offer, including reasonable attorney's fees up to \$300.

NOTICE TO PETITIONER AND PHYSICIAN OF NO PROBABLE CAUSE FINDING (§ 10)

The law requires DPH to investigate each complaint petition filed with it to determine if probable cause exists to institute proceedings against the physician. The act requires DPH to notify the physician and the person who filed the petition or his legal representative when it makes a finding of no probable cause. It must include the reason for such finding.

DPH DATA REGARDING PRACTITIONERS (§ 11 & 12)

By law, anyone licensed to practice medicine, surgery, podiatry, chiropractic, or naturopathy must register annually with DPH and provide his name, residence, business address, and other information DPH requests. The act requires the licensee also to provide the name of his malpractice insurer and the policy number, his area of specialization, whether he is actively involved in patient care, and any disciplinary action against him or malpractice payments made on his behalf in any other state or jurisdiction. The act authorizes DPH to compare the information submitted to information contained in the National Practitioner Data Base.

The act allows doctors to fulfill their obligation to report this information by submitting it as part of their statutorily required physician profile. It requires DPH to revise any forms used for physician profiles to incorporate the additional required information.

NUMBER OF PHYSICIANS (§ 12)

The act requires DPH, beginning January 1, 2005, to report annually to the General Assembly the number of physicians, by specialty, actively providing patient care in Connecticut.

PRIOR MALPRACTICE INSURANCE RATE APPROVAL (§ 13)

The act subjects malpractice insurance rates for physicians, hospitals, advanced practice registered nurses, and physician assistants to prior rate approval by the insurance commissioner. On and after the act's effective date, each insurer or rating organization seeking to change its rates must file a request with the Insurance Department and send written notice to all affected insureds at least 60 days before the change's effective date.

The act requires the insurer or rating organization to demonstrate to the commissioner's satisfaction that (1) it offers a premium reduction or a separate reduced rating classification for insureds who submit proof that they and their personnel will use an electronic health record system during the premium period to establish and maintain patient records and verify patient treatment and (2) the premium or rate reduction reflects the reduction in risk related to using such a system.

As an alternative, if the insurer or rating organization does not offer such premium or rate reduction, it must demonstrate to the commissioner's satisfaction that there is no measurable reduction in risk related to using such a system.

Any request for a rate increase must be filed after notice is sent to insureds and must indicate the date the notice was sent. The notice must indicate that the insured may request a public hearing by submitting a written request to the insurance commissioner within 15 days after the notice date.

The act prohibits the insurance commissioner from approving, modifying, or denying a rate increase until at least 15 days after the date of notice as indicated in the filing. It requires the commissioner to hold a public hearing, if requested, on an increase before acting. The commissioner must approve, modify, or deny the filing within 45 days after its receipt. Her decision may be appealed to Superior Court.

MALPRACTICE RATES (§ 14)

The act requires that insurers and the commissioner consider relevant factors that may reduce rates when establishing malpractice rates for physicians and surgeons, hospitals, or advanced practice registered nurses and physician assistants, including (1) amendments to the offer of judgment law the act makes,

(2) other provisions of the act, and (3) any reduction in risk from using electronic patient health record systems.

CONTINGENCY FEES (§ 15)

Waiving Contingency Fee Limits

The law establishes a sliding scale on contingency fees attorneys may charge clients based on the amount of the settlement or judgment. It allows attorneys to collect (1) one-third of the first \$300,000, (2) 25% of the next \$300,000, (3) 20% of the next \$300,000, (4) 15% of the next \$300,000, and (5) 10% of amounts exceeding \$1,200,000. This sliding scale applies to any lawsuit to recover damages resulting from personal injury, wrongful death, or property damage involving contingency fees, not just to medical malpractice cases. A Superior Court judge interpreted this law to allow clients to waive its protections and agree to pay a higher contingency fee.

The act invalidates a contingency fee arrangement for a medical malpractice case greater than the sliding scale's percentage limitations unless the court, after hearing the claimant attorney's application, grants a different arrangement. The act prohibits the court from approving a contingency fee greater than one-third of the damages awarded.

The act requires the claimant's attorney to attach to the application a copy of the fee arrangement and the proposed unsigned writ, summons, and malpractice complaint. The fee arrangement must provide that (1) the attorney will advance all costs connected to investigating, prosecuting, or settling the case and (2) the claimant will not be liable for reimbursing any such costs if there is no recovery.

The act requires that at the hearing the court address the claimant personally to determine if he understands his rights and has knowingly and voluntarily waived them.

The act requires the court to grant the application if it finds that (1) the case is sufficiently complex, unique, or different from other medical malpractice cases so as to warrant a deviation from the percentage limitations and (2) the claimant knowingly and voluntarily waived his rights to the statutory fee schedule. At the hearing, the claimant's attorney has the burden of showing that the deviation is warranted.

If the court denies the application, it must advise the claimant of his right to seek representation by another attorney willing to abide by the percentage limitations. The court's decision to grant or deny the application may not be appealed. Filing an application tolls the applicable statute of limitations until 90 days after the court's decision on it. The act permits only one application to be filed regarding the claimant and his case.

The act requires the chief court administrator to assign a judge or judges with experience in personal injury cases to hear and determine these applications. A hearing transcript must be prepared. It must be sealed and is available for the court's use only.

The act prohibits an attorney from requiring a claimant to pay interest on the amount of any disbursements and costs the attorney makes in connection with investigating, prosecuting, or settling the malpractice claim.

Calculating Contingency Fee

For medical malpractice contingency fee arrangements, the act requires that the percentages that go to the client and to the attorney be calculated after deducting any disbursements or costs the attorney incurred, other than ordinary office overhead and expenses.

MEDICAL MALPRACTICE DATA BASE—CLOSED CLAIM REPORTS (§ 16)

Prior law authorized the insurance commissioner to require all medical malpractice insurers in Connecticut to submit whatever information she deemed necessary to establish a medical malpractice database. The database could include information on all incidents of medical malpractice, all settlements, all awards, other information relative to procedures and specialties involved, and any other information relating to risk management.

The act instead requires, beginning January 1, 2005, each insurer to provide to the commissioner with a closed claim report, on whatever form she requires. A "closed claim" is a claim that has been settled, or otherwise disposed of, where the insurer has paid all claims. The duty to report also applies to a captive insurer or a self-insured person.

The act requires the insurer to submit the report within 10 days after the end of the calendar quarter in which a claim is closed. The report must include information only about claims settled under Connecticut's laws. It must include details about the insured and insurer, the injury or loss, the claims process, and the amount paid on the claim.

Details About the Insured and Insurer

The report must include the (1) insurer's name; (2) policy limits and whether it was an occurrence policy or was issued on a claims-made basis; (3) insured's name, address, license number, and specialty coverage; and (4) insured's policy number and unique claim number.

Details About the Injury or Loss

The report must specify the (1) date of the injury or loss that was the basis of the claim; (2) date the injury or loss was reported to the insurer; (3) name of the institution or location where the injury or loss occurred; (4) type of injury or loss, including a severity of injury rating that corresponds with the injury scale that the commissioner must establish based on the severity of injury scale developed by the National Association of Insurance Commissioners; and (5) name, age, and gender of any injured person covered by the claim.

Any individually identifiable information (as defined in 45 CFR 160.103) is confidential. The act specifies that reporting of this information is required by law. It requires that if necessary to comply with federal privacy laws, the insured must arrange with the insurer to release the required information.

Details About the Claims Process

The act specifies that details about the claims process include (1) whether a lawsuit was filed, and if so, in which court; (2) its outcome; (3) the number of other defendants, if any; (4) the stage in the process when the claim was closed; (5) the trial dates; (6) the date of any judgment or settlement; (7) whether an appeal was filed, and if so, the date filed; (8) the resolution of the appeal and the date it was decided; (9) the date the claim was closed; and (10) the initial and final initial indemnity and expense reserve for the claim.

Details About the Amount Paid on the Claim

The act specifies that details about the amount paid on the claim include:

1. the total amount of the initial judgment rendered by a jury or awarded by the court;
2. the total amount of the settlement if no judgment was rendered or awarded or the claim was settled after judgment was rendered or awarded;
3. the amount of economic and noneconomic damages, or the insurer's estimate of these amounts in the event of a settlement;
4. the amount of any interest awarded due to failure to accept an offer of judgment;
5. the amount of any remittitur or additur and the amount of final judgment after remittitur or additur;
6. the amount the insurer paid;
7. the amount the defendant paid due to a deductible or a judgment or settlement in excess of policy limits;
8. the amount paid by other insurers or other defendants;

9. whether a structured settlement was used;
10. the expense assigned to and recorded with the claim, including, but not limited to, defense and investigation costs, but not including the actual claim payment; and
11. any other information the commissioner determines necessary to regulate the medical malpractice insurance industry, ensure the industry's solvency, and ensure that such liability insurance is available and affordable.

The act requires the commissioner to establish a closed claim reports electronic database.

Annual Data Summary

The act requires the insurance commissioner to compile the data included in individual closed claim reports into an aggregated summary and prepare a written annual report of the summary data. The report must analyze the closed claim information, including (1) a minimum of five years of comparative data, when available; (2) trends in frequency and severity of claims; (3) itemization of damages; (4) timeliness of the claims process; and (5) any other descriptive or analytical information that would help interpret the trends in closed claims.

The annual report must include a summary of rate filings for medical malpractice insurance for medical professionals and entities that the department approved for the prior calendar year. The summary must include an analysis of the trend of direct losses, incurred losses, earned premiums, and investment income as compared to prior years. The report must also include base premiums charged by medical malpractice insurers for each specialty and the number of providers insured by specialty for each insurer.

The act requires that, beginning March 15, 2006, and annually thereafter, the commissioner must submit an annual report to the Insurance and Real Estate Committee. She must also (1) make the report available to the public, (2) post it on the department's Internet site, and (3) provide public access to the contents of the electronic database after establishing that the names and other individually identifiable information about claimants and practitioners have been removed.

The act requires the insurance commissioner to provide the DPH commissioner with electronic access to all the closed case information she receives.

DPH PATIENT SAFETY PROGRAMS (§ 17)

The act requires the DPH commissioner to develop and implement a process to ensure a continuing and coordinated focus on patient safety programs in DPH. The process must encompass activities DPH undertakes to (1) coordinate state patient safety initiatives; (2)

facilitate ongoing collaborations between the public and private sectors; (3) promote patient safety through educating health care providers and patients; (4) assure coordination in collecting, analyzing, and responding to adverse events reports; (5) coordinate state and federal patient safety programs; (6) participate in the federal Patient Safety Improvement Corps to identify the causes of medical errors; and (7) promote the recommendations of the State Quality of Care Advisory Committee.

The act requires that, beginning January 1, 2005, the commissioner annually submit a report to the governor and the Public Health Committee chairmen describing the process developed, an analysis of its operation and impact, a description of DPH's patient safety activities, and recommendations for future action.

MANDATORY REVIEW OF NONECONOMIC DAMAGES OVER \$1 MILLION (§ 18)

The act requires the court, in any medical malpractice case in which the jury awards more than \$1 million in noneconomic damages, to review the evidence to determine if the amount is excessive as a matter of law. Specifically, the act requires the court to consider whether it so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake, or corruption. If the court concludes the award was excessive, it must order the plaintiff to remit the excessive amount. If the plaintiff refuses to do so, the court must set aside the verdict and order a new trial.

PHYSICIAN TAX CREDIT (§§ 19 AND 20)

The act gives any physician who resides in Connecticut the right to an income tax credit for part of the amount of his medical malpractice insurance premiums due and actually paid during the taxable year. The credit applies to tax years beginning January 1, 2004.

The credit equals the amount by which the premiums paid during the taxable year exceed 25% of the physician's Connecticut taxable income, up to 15% of the premiums. It may be used to reduce the taxpayer's tax liability only for the year for which it applies and may not be used to reduce the tax liability to less than zero. The amount of income tax due must be calculated without regard to this credit.

The act makes any physician who has ever had a medical malpractice judgment entered against him ineligible for the credit.

Prior law transferred \$2 million from the Biomedical Research Trust Fund to the General Fund in FY 2004-05. The act offsets the revenue loss attributable to the credit from the transferred amount.

CAPTIVE INSURERS (§§ 21 AND 22)

A "captive insurer" is an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies. In the case of groups and associations, it is an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

The act requires each captive insurer that offers, renews, or continues insurance in Connecticut to provide the following information to the insurance commissioner in the same manner required for risk retention groups:

1. a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist;
2. a copy of each examination of the captive as certified by the commissioner or public official conducting the examination;
3. upon request by the commissioner, a copy of any audit performed with respect to the captive; and
4. such information as may be required to verify that it satisfies the definitional requirements of a risk retention group (apparently this requirement only applies if the captive is such a group).

If a captive insurer does not maintain this information in this form, the act permits it to submit the information to the commissioner on whatever form she prescribes. The act specifies that these requirements do not apply to a captive insurer that is otherwise required by law to submit such information to the commissioner.

The act requires the commissioner to act as agent for service of process for risk retention groups domiciled outside the United States and for captive insurers. By law, the commissioner acts as agent for risk retention groups domiciled in another state that offer insurance in Connecticut.

ELIMINATION OF MALPRACTICE SCREENING PANEL (§ 23)

The act eliminates the voluntary Medical Malpractice-Screening Panel. Under prior law, the parties had to consent to use the panel. With their mutual agreement, the insurance commissioner or her designee selected panel members from lists of names submitted by the Connecticut State Medical Society and the Connecticut Bar Association. The panel was

composed of two doctors and one attorney with trial experience in personal injury cases who acted as chairman. One of the doctors had to practice in the same specialty as the defendant. Panel members could not be from communities in which the defendant doctor or the parties' attorneys practice. Panel members were not compensated. The panel held confidential hearings when and where it decided and made transcripts available at cost to either party.

The panel's conclusion as to liability was outlined in a finding signed by the members and recorded by the insurance commissioner. The panel did not address the issue of damages. Each party received a copy of the panel's findings. If a subsequent trial was held, only unanimous findings of the panel were admissible. The court or jury determined the weight assigned to such admissible findings. No member could be compelled to testify.

BACKGROUND

"Similar Health Care Provider"

By law, if the defendant health care provider is not certified by the appropriate American board as a specialist, is not trained and experienced in a medical specialty, or does not hold himself out as a specialist, a "similar health care provider" is one who is (1) licensed by the appropriate regulatory agency of this state or another state requiring the same or greater qualifications and (2) trained and experienced in the same discipline or school of practice. Such training and experience must be a result of active involvement in the practice or teaching of medicine within the five-year period before the incident giving rise to the claim.

If the defendant health care provider is certified by the appropriate American board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, a "similar health care provider" is one who is (1) trained and experienced in the same specialty and (2) certified by the appropriate American board in the same specialty. But, if the defendant health care provider is providing treatment or diagnosis for a condition that is not within his specialty, a similar health care provider is a specialist trained in the treatment or diagnosis of that condition.

Sanctions if Certificate Not Filed in Good Faith

By law, the court must impose an appropriate sanction on the person who signed the certificate if it determines, after discovery is completed, that the certificate was not made in good faith and that no valid issue was presented against a health care provider who fully cooperated in providing informal discovery. It may also sanction the claimant. The sanction may include an

order to pay to the other party or parties the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. The court also may submit the matter to the appropriate authority for disciplinary review of a claimant's attorney who submitted the certificate.

Attorney Fees

Table 1 shows how the law's formula works for each of four hypothetical awards. It shows the actual amount of fees the statute allows the attorney to collect, the resulting percentage of the total award the attorney's fees constitute, and the amount and percentage the client would receive.

Table 1: Attorney's Fees for Various Damage Awards

<i>Damage Award or Settlement</i>	<i>Contingency Fee the Law Allows</i>	<i>Percentage of Total Award to Attorney</i>	<i>Amount Client Receives</i>	<i>Percentage of Total Award to Client</i>
\$100,000	\$33,333	33.3%	\$66,667	66.7%
\$500,000	\$150,000	30%	\$350,000	70%
\$1,000,000	\$250,000	25%	\$750,000	75%
\$5,000,000	\$660,000	13.2%	\$4,340,000	86.8%
\$10,000,000	\$1,160,000	11.6%	\$8,840,000	88.4%

Waiver of Fee Schedule

Current statute does not explicitly indicate whether a client can waive the statutory contingency fee limits. One Superior Court case held that tort victims could waive their right to the protections afforded by the contingency fee law. It also decided the plaintiff's waiver was valid, and the fee arrangement the plaintiff entered into with her attorney was reasonable (*In re Estate of Salerno*, 42 Conn. Supp. 526 (1993)).

The court resolved the case on nonconstitutional grounds, noting that rights granted by statute could be waived unless the statute is meant to protect the general rights of the public rather than private rights. It cited instances where statutes relating to litigation have been construed as conferring a private right that can be waived (e. g. , statute of limitations for tort actions, right to trial by jury, defense of statute of fraud).

It concluded that the fee cap statute clearly confers a private right and does not protect the general rights of the public. It also cited the legislative history in which proponents of the law indicated that the fee limits could be waived.

Complaints Against Doctors Filed With DPH

A person may file a petition against a doctor for the same reasons the Medical Examining Board may discipline a doctor. These include:

1. physical illness or loss of motor skill, including, but not limited to, deterioration through the aging process;
2. emotional disorder or mental illness;
3. abuse or excessive use of drugs or alcohol;
4. illegal, incompetent, or negligent conduct in the practice of medicine;
5. possession, use, prescription for use, or distribution of controlled substances or legend drugs, except for therapeutic or other medically proper purposes;
6. misrepresentation or concealment of a material fact in the obtaining or reinstatement of a license to practice medicine;
7. failure to maintain required professional liability insurance;
8. performing any activity for which accreditation is required by law without the appropriate accreditation; and
9. violation of any law regulating medicine and surgery or any regulation adopted under such laws.

Individually Identifiable Health Information

Individually identifiable health information is defined by federal regulation (45 CFR 160.103) as including demographic information, collected from an individual that:

1. is created or received by a healthcare provider, health plan, employer, or health care clearinghouse; and
2. relates to an individual's past, present, or future physical or mental health or condition; providing health care to an individual; or paying for the provision of health care to an individual; and that (a) identifies the individual or (b) may lead to a reasonable belief that it could be used to identify the individual.

Licensed Health Care Providers

The mediation requirement applies to the following licensed health care providers:

1. doctors and surgeons,
2. chiropractors,
3. natureopaths,
4. podiatrists,
5. athletic trainers,
6. physical and occupational therapists,
7. substance abuse counselors,

8. radiographers and radiologic technologists,
9. midwives,
10. nurses and nurses aides,
11. dentists and dental hygienists,
12. optometrists and opticians,
13. respiratory care practitioners,
14. pharmacists,
15. psychologists,
16. marital therapists and professional counselors,
17. clinical social workers,
18. veterinarians,
19. massage therapists,
20. electrologists,
21. hearing instrument specialists and audiologists,
22. ambulance drivers, and
23. emergency medical technicians and communications personnel.

It applies to the following health care institutions: hospitals; outpatient surgical facilities; residential care homes; health care facilities for the handicapped; nursing homes; rest homes; home health and homemaker-home health aide agencies; mental health and substance abuse treatment facilities; college infirmaries; diagnostic and treatment facilities, including those operated and maintained by a state agency, except facilities for the care or treatment of mentally ill or substance abusing people; and intermediate care facilities for the mentally retarded.

Related Legislation

PA 04-164 revises the law requiring hospital and outpatient surgical facilities to report adverse events to DPH. It allows DPH to designate as a "patient safety organization" a public or private organization whose primary mission involves patient safety improvement activities.

PA 04-1, May Special Session, requires the Connecticut Health and Educational Facilities Authority (CHEFA) to establish a three-year demonstration program to provide grants to nonprofit hospitals that establish captive insurers, or expand coverage offered by existing captive insurers, to provide medical malpractice insurance coverage to physicians and surgeons who have hospital privileges at the hospitals. CHEFA must use \$1.5 million from its reserves to establish a fund to pay for the grants. The fund may also cover legal, actuarial, consulting, and other insurance or indemnity-related costs.

PA 04-159—sSB 129

Judiciary Committee

Human Services Committee

AN ACT CONCERNING REGIONAL PROBATE COURT SERVICES FOR CHILDREN'S MATTERS

SUMMARY: This act creates a regional pilot probate court for children's matters. These involve guardianship, termination of parental rights, adoption, paternity, emancipation, and voluntary commitment of mentally ill children to the Department of Children and Families. The probate court administrator must use available resources, including the Probate Court Administration Fund (PCAF), to establish and fund the program in the New Haven area. He must appoint a regional administrative judge, locate an appropriate facility, and establish policies and procedures. He must submit a report to the Judiciary Committee by January 3, 2007 containing recommendations for expanding the program.

The administrative judge and other participating judges will hear children's matters on a separate docket. Each probate judge whose district is located in the region can choose or decline to participate in the program.

EFFECTIVE DATE: Upon passage

PROBATE COURT ADMINISTRATOR'S DUTIES

Under the act, the probate court administrator must consult with the probate judges of the 10 districts within the region (New Haven, Branford, East Haven, Hamden, Milford, North Branford, North Haven, Orange, West Haven, and Woodbridge) before establishing the pilot program. He may locate the children's court in any existing probate court facility in the region or at some other location within its boundaries. He must appoint a sitting probate judge as administrative judge for the region, with the advice of the other participating judges.

He may use money in the PCAF to pay for (1) necessary facility improvements; (2) operating expenses; (3) leasing and improving office space owned by participating cities and towns; and (4) compensating the program's administrative judge for his administrative responsibilities, subject to the chief court administrator's approval.

If the probate court administrator establishes a separate facility for the court, the town or city where it is located may submit expense vouchers which he must reimburse from the PCAF. If the children's court is established in an existing probate facility, the city or town must provide adequate facilities, equipment, and services as under existing law.

REGIONAL CHILDREN'S COURT ADMINISTRATIVE JUDGE

The administrative judge must be a sitting probate judge at the time of his appointment, but may continue to serve at the pleasure of the probate court administrator after his elected term expires. But he cannot act as a probate court judge after his elected term expires and does not accrue any additional benefits thereafter. He is entitled to compensation and benefits as long as he remains a probate judge and may receive additional pay so long as his total compensation does not exceed the statutory maximum for probate judges.

Duties

The administrative judge must manage children's court cases and coordinate social services, staff, financial management, and recordkeeping. He may accept children's matters transferred from any probate court within the region before July 1, 2007.

With the probate court administrator's approval, he can hire staff; buy furniture, office supplies, computers, and other equipment; and contract for services necessary or advisable to expeditiously carry out the court's business.

Staff are not state employees but are entitled to the same benefits other probate court employees receive by law.

BACKGROUND

Related Act

PA 04-142 (1) eliminates a provision in prior law requiring transferred children's matters to be heard in the probate court where the matter was initiated unless all parties agree otherwise and (2) permits transfers in uncontested cases.

PA 04-160—sSB 291

Judiciary Committee

Public Health Committee

AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL

SUMMARY: This act creates procedures and standards for involuntarily medicating, for up to 120 days at a time, criminal defendants who are hospitalized at Connecticut Valley Hospital's Whiting Forensic Division or another hospital chosen by the Department

of Mental Health and Addiction Services (DMHAS) for treatment to restore their competency to stand trial (i.e., the ability to understand the nature of the charges and assist in their defense). The procedures and standards differ depending on whether the patient is (1) unable, because of his illness, to give voluntary, informed consent or (2) able, but unwilling, to do so. In the former case, the act authorizes a district probate judge to appoint a special limited conservator to make the decision. In the latter, it permits the hospital to obtain a probate court order to forcibly medicate a patient who is dangerous to himself or others.

The act also makes technical changes.

EFFECTIVE DATE: October 1, 2004

SPECIAL LIMITED CONSERVATORS

Before petitioning the probate court to appoint a special limited conservator, the hospital's head, or his designee, and two qualified physicians must agree that the defendant is incapable of giving informed consent and that medication is necessary for his treatment.

Special limited conservators must be licensed health care providers with specialized training in treating patients with psychiatric disabilities. They cannot be employed at the hospital where the defendant is admitted. The appointing judge must give them specific authority to consent to the administration of medication. The probate court administrator must establish reasonable compensation rates and use probate court administration funds to pay them.

After appointment, a conservator must review the patient's records, meet with him and his physician, and decide whether to consent to the patient being medicated. In making this decision, he must consider:

1. the medication's risks and benefits, including the likelihood and seriousness of adverse side effects;
2. the patient's preferences and religious views; and
3. the prognosis with and without medication.

Conservators cannot consent to involuntary medication of patients whose sincere religious beliefs call for healing by prayer unless they pose a serious risk of harm to themselves or others.

Special conservators can exercise this authority for up to 120 days, with possible 120-day extensions when the petitioners notify the court that the conditions giving rise to the original order remain unchanged. The probate court can grant extensions without holding a hearing and must promptly notify the patient, conservator, and facility when it does so.

Termination of the patient's placement in DMHAS' custody automatically terminates the limited conservatorship.

The act gives special limited conservators some immunity from lawsuits arising from their negligence. They cannot be sued in courts unless the claims commissioner gives the injured party permission to sue.

WHEN INFORMED CONSENT IS WITHHELD

The act also permits the hospital to file a probate court petition to forcibly medicate a mentally competent defendant who refuses medication. The hospital's head, or his designee, and two qualified physicians must find that (1) there is no less intrusive beneficial treatment and (2) without medication, the patient's psychiatric disabilities will continue unabated and place the defendant or others in direct threat of harm. By law, "direct threat of harm" means that the patient's clinical history demonstrates a pattern of serious physical injury or life-threatening injury to self or others and a high probability that the patient will repeat it unless medicated.

Involuntary medication orders may last for up to 120 days with possible 120-day extensions when the petitioners notify the court that the conditions giving rise to the original order remain unchanged. The probate court can grant extensions without holding a hearing and must promptly notify the patient and facility when it does so.

PA 04-175—HB 5216

Judiciary Committee

Public Health Committee

AN ACT CONCERNING THE FORMATION OF LIMITED LIABILITY COMPANIES TO RENDER PROFESSIONAL SERVICES BY LICENSED OR CERTIFIED ALCOHOL AND DRUG COUNSELORS

SUMMARY: By law, people licensed to offer the same professional services may form a limited liability company (LLC) to offer those services. The law also authorizes LLCs for mixed groups of licensed psychologists, marital and family therapists, social workers, nurses, and psychiatrists. This act allows the following mixed professional groups to form LLCs: licensed doctors and surgeons, occupational therapists, social workers, and alcohol and drug counselors. The act specifies that any LLC an alcohol and drug counselor forms must be of this mixed type.

The act requires that (1) each LLC member be licensed or otherwise authorized by Connecticut law or in any other jurisdiction to render such services; (2) the LLC render only those professional services for which it was formed or services ancillary to them; and (3) the LLC render its services in Connecticut only through its

members, managers, employees, and agents licensed or otherwise legally authorized to do so.
EFFECTIVE DATE: October 1, 2004

PA 04-184—HB 5557

Judiciary Committee

Appropriations Committee

AN ACT CONCERNING FEES CHARGED BY COURT REPORTERS AND MONITORS

SUMMARY: This act increases the fee court reporters and monitors charge for the first copy of a transcript from \$1.75 to \$3.00 per page. Subsequent copies remain \$1.75 per page.

By law, state and municipal officials pay \$1.50 per page but once an official has paid this fee, subsequent officials pay 50 cents per page. The law also prohibits court reporters from charging (1) a state's attorney for a copy of a transcript requested by a party of record and (2) the court for a copy requested by a state's attorney or a party of record.

EFFECTIVE DATE: July 1, 2004

PA 04-187—sHB 5653

Judiciary Committee

AN ACT CONCERNING THE UNLAWFUL USE OF A RECORDING DEVICE

SUMMARY: With one exception, this act makes it a class B misdemeanor (see Table on Penalties) to engage in camcorder piracy in a movie theater or screening room where a motion picture is being shown. It applies to operators of audiovisual equipment who knowingly use the equipment's recording or transmitting capabilities with the intention of recording a motion picture without permission from both the facility's owner or lessee and the movie's licensor. The exemption is for law enforcement employees or agents engaged in authorized investigative, protective, law enforcement, or intelligence-gathering activities. The act does not preclude prosecuting camcorder piracy under other state laws.

It permits facility owners or lessees and their employees or authorized agents to ask the name and address of people they reasonably believe are engaging, or attempting to engage, in camcorder piracy and to detain them until the police arrive. The detainee is not required to provide any other information until taken into police custody.

If a detainee sues over the detention, the act establishes a rebuttable presumption that he was violating or attempting to violate the law when evidence

is produced that the defendant had reasonable grounds to believe that this was occurring at the time of the detention. "Reasonable grounds" are defined as knowledge that a person has operated or attempted to operate an audio-visual recording function of a device in the theater.

EFFECTIVE DATE: October 1, 2004

PA 04-188—HB 5662

Judiciary Committee

Government Administration and Elections Committee

AN ACT CONCERNING DNA TESTING

SUMMARY: This act assigns agency responsibility for ordering and carrying out the collection of DNA samples from sex offenders, felons, and people guilty of those crimes but acquitted because of mental disease or defect. It creates a protocol for obtaining samples from people convicted of sexual offenses in other jurisdictions when they come into contact with designated state agencies. It makes it a class A misdemeanor (see Table on Penalties) to refuse to allow a sample to be taken. The Department of Public Safety (DPS) must be notified within 30 days of a prisoner's refusal to submit a sample in order to initiate criminal proceedings against him.

The act makes quarterly meetings and records of the DNA Data Bank Oversight Panel subject to disclosure under the state Freedom of Information Act but exempts from disclosure discussions and records of personally identifiable DNA information contained in the data bank. The panel, created by PA 03-242, is charged with taking necessary action to assure the data bank's integrity, including destroying inappropriately obtained samples and associated personally identifying information.

EFFECTIVE DATE: October 1, 2004

SAMPLING AUTHORITY

The table below indicates agency responsibilities for obtaining the DNA samples.

<i>Offender Status</i>	<i>Agency Responsible For Collecting DNA Sample</i>
Prisoner serving time for commission of covered crime	Department of Correction (DOC)
Criminal defendant convicted of covered crime but not sentenced to jail time	DPS (at a time and place specified by the sentencing court)
People in the Department of Public Health and Addiction Services' (DMHAS) or Department Mental	DMHAS or DMR

Retardation' (DMR) custody following acquittal for covered crime due to a mental disease or defect	
Probationers and parolees with prior convictions for covered crimes (need not be the crime giving rise to current probation or parole status)	Judicial Department and Parole Board, respectively
People convicted or acquitted because of mental disease or defect in other jurisdictions of crimes substantially similar to Connecticut laws requiring sex offender registration who are in the custody of DOC, Psychiatric Security Review Board, Judicial's Court Support Services Division, or Parole Board	The custodial agency

PA 04-190—HB 5601*Judiciary Committee***AN ACT CONCERNING AN ADDITIONAL SENTENCE OF IMPRISONMENT FOR UNPAID FINES**

SUMMARY: This act eliminates a requirement that a prisoner serving a sentence at Somers prison that includes the imposition of a fine serve an additional sentence of one day for each three dollars of the fine unpaid after his prison term expires.

EFFECTIVE DATE: October 1, 2004

BACKGROUND*Related Laws*

Inmates held in prison because of failing to pay a fine are credited \$50 a day and an additional \$50 for each day they are employed at productive or maintenance work with a satisfactory work record (CGS § 18-50).

The Department of Correction (DOC) commissioner has established a compensation schedule for services performed on behalf of the state by inmates of any DOC institution or facility. Any sums earned must be deposited, under the direction of the administrative head of such institution or facility, in a savings bank or state bank and trust company in Connecticut and must be paid to the inmate on his discharge. But the warden or administrator may, while the inmate is in custody, disburse any money the inmate earns in accordance with the following priorities: (1)

federal taxes due; (2) court-ordered restitution or payment of compensation to a crime victim; (3) payment of a civil judgment rendered in favor of a crime victim by any court of competent jurisdiction; (4) victim compensation through the criminal injuries account administered by the Office of Victim Services; (5) state taxes due; (6) support of dependents, if any; (7) the inmate's necessary travel expense to and from work and other incidental expenses; (8) costs of his board as determined by the commissioner; and (9) payment for a fine when an inmate is held only for paying a fine. Any interest that accrues must be credited to any institutional inmate welfare fund (CGS § 18-85).

PA 04-234—sHB 5211*Judiciary Committee**Appropriations Committee***AN ACT CONCERNING PRISON OVERCROWDING**

SUMMARY: This act combines the Board of Pardons and Board of Parole into the Board of Pardons and Paroles, makes a number of changes related to parole, allows the board and Department of Correction (DOC) to transfer certain inmates to facilities other than prisons under certain circumstances, and alters a number of release provisions that apply to parole and DOC.

The act sets rules for Board of Pardons and Paroles membership and hearings, makes the board chairman the executive and administrative head of the board (under prior law the DOC commissioner was the head of the Board of Parole), creates an executive director who has many of the responsibilities previously assigned to the DOC commissioner, and requires certain regulations. The act makes the Board of Pardons and Paroles part of DOC for administrative purposes only, specifies the board's independent decision-making authority, and makes DOC responsible for supervising parolees.

The act makes a number of changes regarding parole, including:

1. requiring parole hearings once someone reaches certain specified points in his sentence;
2. changing parole eligibility for those convicted of certain crimes;
3. changing eligibility for administrative parole;
4. allowing paroled inmates to move to alternate facilities within 18 months of their parole release date;
5. allowing compassionate parole release under certain circumstances;
6. requiring a board employee to conduct parole revocation and rescission hearings;

7. requiring the board chairman and executive director to consult with DOC to develop a parole orientation program;
8. requiring the board chairman and executive director to create an incremental sanctions system for parole violations; and
9. requiring a hearing on a violation of special parole.

It makes a number of changes regarding DOC's options with inmates. It:

1. allows DOC to release people charged with certain crimes to a DOC-approved residence;
2. authorizes DOC to transfer an inmate on work or education release to an approved community or private residence if he already participated satisfactorily in a residential program;
3. increases the maximum length of DOC inmate furloughs (which are allowed for certain limited purposes); and
4. requires DOC, which is authorized to contract to send additional inmates out-of-state, to submit that contract to the Appropriations and Judiciary committees for review and comment before entering the contract.

The act requires development of (1) plans to reduce by at least 20% the number of incarcerations due to technical violations of the conditions of probation or parole and (2) a comprehensive reentry strategy.

The act requires the board to create an administrative pardons process for certain people.

The act also:

1. allows someone to participate in the alcohol and drug dependency diversion program twice, instead of once, if he is otherwise eligible;
2. changes a number of provisions on recovering the costs of an inmate's incarceration, including making additional types of property subject to the state's claim but excluding others such as property acquired for work performed during incarceration as part of a job training, skill development, career opportunity, or enhancement program; and
3. requires studies (a) by the Legislative Program Review and Investigations Committee (LPRIC) and the Office of Fiscal Analysis of the act's implementation and effects and (b) by LPRIC of the impact and costs of mandatory minimum sentences.

The act removes the court's discretion to depart from a mandatory minimum sentence for certain drug crimes under certain circumstances. (But PA 04-257, § 136, reinstates these provisions, leaving the law unchanged (§ 36)).

The act makes a number of other changes and makes technical changes.

EFFECTIVE DATE: Upon passage, except the provisions on creating the Board of Pardons and Paroles, administrative pardons regulations, incremental sanctions system, and parole orientation program are effective July 1, 2004.

BOARD OF PARDONS AND PAROLES (§§ 1-2, 32, 33, 35)

Under prior law, the Board of Pardons and Board of Parole were part of DOC. The act combines these boards into the Board of Pardons and Paroles and makes the new board part of DOC for administrative purposes only. This means that while DOC continues to provide certain administrative services to the board, it otherwise operates autonomously. It makes DOC responsible for supervising parolees transferred to the new board's jurisdiction. It specifies that DOC is responsible for supervising parolees and administering the Interstate Compact for Adult Offender Supervision.

The act gives the board independent decision-making authority to (1) grant or deny parole or special parole, (2) set parole and special parole supervision conditions, (3) rescind or revoke parole or special parole, and (4) grant releases and commute punishments including the death penalty.

Beginning October 1, 2004, the new board consists of 13 members appointed by the governor with the consent of either house of the General Assembly (under prior law, the Board of Parole had 15 members and the Board of Pardons had five members appointed in this manner).

The act ends the terms of members of the Parole Board on September 30, 2004. New members serve for the length of the governor's term. Under prior law, the Parole Board chairman and vice-chairman served for the length of the governor's term and until a successor was appointed, members served four-year terms, and Pardons Board members served six years.

Like the Parole Board members under prior law, members of the new board are paid \$110 for each day spent performing their duties and receive necessary expenses.

The act requires the governor to appoint the chairman from among the members. This person must be qualified by education, experience, and training in administering community corrections, parole, or pardons. It requires the chairman to work full time at his duties and be paid as determined by the Department of Administrative Services commissioner. This requirement previously applied to the Parole Board chairman.

The act makes the new board the successor to the Board of Pardons and Board of Parole, substitutes the new board whenever the others are used in the statutes or 2003 and 2004 public acts, and requires the

Legislative Commissioners' Office to make necessary changes.

Hearings

The act authorizes the chairman to sit on both pardons and parole release panels. He must assign seven members exclusively to parole release hearings and five to pardons hearings. Except for the chairman, no member assigned to one type of hearing can later be assigned to the other.

The chairman or his designee and two members must conduct all parole hearings and approve or deny all parole release, revocation, or rescission recommendations from a board employee. Pardons panels consist of three members. The chairman must be on the panel for hearings on commutation of the death penalty and can be on other panels.

The board must hold a pardons hearing at least every three months. The hearings must be in various geographic areas of the state, and the board cannot hold hearings in or on correctional facility grounds unless solely for the benefit of applicants incarcerated at the time of the hearing.

The act repeals provisions on appointing members of the Board of Pardons, placing the board in DOC, requiring four out of the five members to approve a decision, authorizing the board to compel the attendance of witnesses, giving the secretary the power to issue process to command DOC officials to bring prisoners before the board, and certain other board procedures.

Chairman

The act makes the chairman of the Board of Pardons and Paroles, instead of the DOC commissioner, the executive and administrative head of the board and requires him to:

1. oversee the board's administrative affairs;
2. adopt policies for all areas of pardons and paroles, including granting pardons, commutations, or releases including commutations of the death penalty; risk-based structured decision making; and release criteria (prior law required the DOC commissioner to set policies in all areas of parole including decision making, release criteria, and supervision standards);
3. consult with DOC on common issues, including prison overcrowding;
4. consult with the Judicial Branch on common issues, including community supervision; and
5. sign and issue subpoenas to compel witnesses to attend and testify at parole hearings.

Executive Director

The act requires the chairman to appoint an executive director. The executive director performs many of the functions previously performed by the DOC commissioner for the parole board. The executive director must:

1. direct and supervise all administrative affairs;
2. prepare the budget and annual operation plan;
3. assign staff to administrative reviews;
4. organize pardons and parole release hearing calendars;
5. implement a uniform case filing and processing system; and
6. create staff and member development, training, and education programs.

Regulations

The act requires the chairman, in consultation with the executive director, to adopt regulations (1) for parole revocation and rescission hearings that include due process requirements and (2) requiring board members in pardons hearings to issue written statements of the reasons for rejecting a pardon application. The act requires the chairman to adopt regulations, rather than policy, to administer the Interstate Parole Compact. The act also requires them to adopt regulations for an administrative pardons process (see below).

PAROLE CHANGES

Parole Supervision (§ 3)

The act provides that a parolee on parole is under the board's jurisdiction rather than the board's custody and control. It requires anyone released under this provision to remain under DOC custody and be subject to its supervision during the parole period.

The law requires a parole order to fix the limits of a parolee's residence and, under prior law, the parole panel had discretion to change it. The act requires the board and DOC commissioner to jointly exercise this discretion.

Required Parole Hearings (§ 3)

By law, someone is eligible for parole after serving 50% of his sentence unless he committed (1) a crime where the underlying facts and circumstances involved the use, attempted use, or threatened use of force, which makes him eligible only after serving 85% of the sentence or (2) certain serious crimes that are ineligible for parole.

The act requires a hearing to determine the suitability for parole release of inmates (1) who are

eligible for parole after serving 50% of their sentences but who have not been released to parole after they have served 75% of their sentences and (2) who are eligible for parole after serving 85% of their sentence, when they reach the 85% mark. A board employee or a panel, if the chairman finds it necessary, must base the assessment on whether (1) there is a reasonable probability that the person will refrain from violating the law and (2) the benefits to the person and society resulting from release substantially outweigh the benefits to the person and society from his continued incarceration. The board must state for the record specific reasons why the person and the public would not benefit from the person's parole while transitioning to the community if it requires continued confinement. The board's decision is not appealable.

The act deletes a requirement that the Board of Parole report monthly to the Office of Policy and Management and the Appropriations, Judiciary, and Public Safety committees on the number of inmates eligible for parole who completed 75% of their sentence in the preceding month and were not approved for parole.

Parole Eligibility (§ 3)

The act allows people convicted of an offense committed with a firearm in, on, or within 1,500 feet of elementary or secondary school grounds to be eligible for parole. (People convicted of these crimes would be subject to the existing parole eligibility requirements and likely would be eligible after serving 85% of their sentences because use of a firearm would be considered use, attempted use, or threatened use of force.) The act makes someone convicted of 1st degree aggravated sexual assault ineligible for parole.

Administrative Parole Eligibility (§ 4)

By law, under the administrative parole procedure, a board employee reviews an inmate's case and a recommendation for parole must be approved by at least two board members. The act changes eligibility for this procedure by:

1. making all those subject to the 85% rule ineligible,
2. removing the prohibition against using this procedure for inmates who have more than three years left on their sentences, and
3. removing the prohibition against using this procedure for inmates convicted of certain crimes (but many of these crimes are subject to the 85% rule and remain ineligible for this procedure under the act).

The crimes are: manslaughter in the 1st degree; manslaughter in the 1st degree with a firearm;

manslaughter in the 2nd degree; manslaughter in the 2nd degree with a firearm; manslaughter in the 2nd degree with a motor vehicle; misconduct with a motor vehicle; criminally negligent homicide; 1st degree assault; 1st degree assault of an elderly, blind, disabled, pregnant, or mentally retarded person; 1st degree sexual assault; 1st degree aggravated sexual assault; sexual assault in a spousal or cohabiting relationship; kidnapping in the 1st degree; kidnapping in the 1st degree with a firearm; 1st degree robbery; and employing a minor in an obscene performance.

As a result of the act's changes, any inmate subject to the 50% rule is eligible for this procedure but all other inmates are ineligible.

The act also allows the board's chairman to require a parole hearing if he deems it necessary. The law already requires a hearing if a victim requests it.

Transfer to Halfway Houses and Other Facilities (§ 9)

Under the act, the board chairman can transfer inmates who are granted parole and are within 18 months of their parole release date to a public or private nonprofit halfway house, group home, mental health facility, or approved community or private residence. Someone released under this provision is transferred to the board's jurisdiction but he remains under DOC custody and DOC is responsible for supervising him. He may be returned to confinement in a correctional facility at any time.

Compassionate Parole Release (§ 28)

The act allows the Board of Parole (which becomes part of the new Board of Pardons and Paroles) to grant an inmate, other than one convicted of a capital felony, a compassionate parole release if he:

1. is physically incapable of presenting a danger to society because he is physically or mentally debilitated; incapacitated or infirm because of advanced age; or has a non-terminal condition, disease, or syndrome and
2. has served at least half of his sentence or half of his remaining sentence after the board commuted his original sentence.

A person granted a release is subject to terms and conditions set by the board and is supervised by DOC.

Parole Hearings to Revoke or Rescind Parole (§ 6)

The act requires a board employee to conduct all parole revocation and rescission hearings. To revoke or rescind parole or special parole, the act requires the employee to recommend revocation or recession after a hearing and at least two members of a panel to approve it.

Parole Orientation Program (§ 1(j)(1))

The act requires the board chairman and executive director, in consultation with DOC, to develop a parole orientation program for inmates eligible for parole when they are transferred to DOC custody. The program must include general legal information and policies on parole release, calculating time served, conditions of release, supervision practices, revocation and rescission policies, and procedures for administrative review and panel hearings. It must include any other relevant information to prepare inmates for parole.

Incremental Sanctions for Parole Violations (§ 1(j)(2))

The act requires the chairman and executive director to create an incremental sanctions system for parole violations that includes re-incarceration based on the type, severity, and frequency of the violation and specific periods of incarceration for certain violations.

Special Parole (§ 5)

By law, when a person leaves prison and serves a period of special parole, he is transferred from DOC custody to the jurisdiction of the Parole Board (which becomes part of the new Board of Pardons and Paroles) chairman. The act makes DOC responsible for supervising the person during the special parole period.

Under the act, when a parole officer determines that someone violated the conditions of his special parole, the board must hold a hearing on the charge without unnecessary delay. The parolee must be told of the manner of the alleged violation and be advised of his due process rights. Once a violation is established, the act authorizes the board to (1) continue the special parole, (2) modify or enlarge its conditions, or (3) revoke the special parole.

The act requires the chairman to issue an order to commit the person to a correctional institution when the board revokes his special parole. The commitment period cannot exceed the unexpired portion of the special parole, and the board can allow the person to be released again on special parole at any time without a court order.

Placement in Any DOC Correctional Institution (§ 8)

The act allows a paroled inmate returned to DOC custody to be placed in any correctional institution and not just the one he was paroled from. (PA 04-257 also makes this change.) This also applies to someone on special parole.

DOC OPTIONS

Release by DOC of Pre-Conviction Inmates (§ 10)

The act allows DOC to release people the court commits to its custody to a DOC-approved residence when they are charged only with a misdemeanor or most class D felonies. This provision does not apply to the following class D felonies: 2nd degree assault with a firearm; 2nd degree assault of an elderly, blind, disabled, pregnant, or mentally retarded person (with or without a firearm); 2nd degree assault with a motor vehicle; 3rd degree sexual assault; 4th degree sexual assault when the victim is under age 16; or 1st degree stalking. DOC cannot exercise this authority if the court orders otherwise.

The act allows DOC to impose conditions on the person's release including participating in a substance abuse treatment program, electronic monitoring, or use of monitoring technology or services. The person remains under DOC custody and is supervised by DOC employees. The person can be returned to prison for violating the conditions.

Community Justice Center Request for Proposals (§ 27)

The 2003 budget act (PA 03-1, June 30 Special Session) transferred \$2 million from the appropriation to DOC for Personal Services to its appropriation for Community Justice Centers during FY 2005.

To implement this provision, the act requires DOC, by October 1, 2004, to issue a request for proposals for a community justice center in Hartford with at least 500 beds to be operated by a nonprofit corporation that (1) has experience in operating these facilities and (2) is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code. Corporations submitting proposals must have an acceptable site for the center as of the due date for submitting proposals.

Work and Education Release (§ 30)

The act authorizes DOC to transfer an inmate on work or education release to an approved community or private residence if he already participated satisfactorily in a residential program. The law allows DOC to transfer someone to a different correctional institution, public or private nonprofit halfway house, group home, or mental health facility as part of this program. The act eliminates the requirement that the warden, superintendent, or other person in charge of a facility concur with DOC's decision before transferring a person to that facility. As under prior law, a transferred inmate remains under DOC jurisdiction.

Furloughs (§ 31)

The act increases, from 15 to 30 days, the length of time for which DOC can release an inmate on furlough to visit a dying relative, attend a relative's funeral, get otherwise unavailable medical services, contact prospective employers, or for other compelling reasons consistent with rehabilitation.

By law, DOC must have a reasonable belief that the inmate will honor the trust, must specifically designate the place to be visited, and prescribe conditions. DOC has discretion to renew a furlough. By law, failure to return from a furlough is 1st degree escape, a class C felony (see Table on Penalties).

Inmates Out-of-State (§ 11)

The law authorizes the DOC commissioner to enter into contracts with government or private vendors to supervise up to 500 inmates out of state. PA 03-6, June 30 Special Session, authorized her, during the 2003-05 biennium, to enter into contracts with government or private vendors to supervise up to 2,000 additional inmates out of state and to enter into a contract for some or all of the additional inmates with the Virginia Department of Corrections (which has an existing contract to supervise 500 inmates) without following the competitive bidding or negotiation requirements. This act requires the commissioner to submit a proposed contract to the Appropriations and Judiciary committees for review and comment before entering the contract. PA 04-2, May Special Session, § 89, limits the provision to sending an additional 1,000 inmates out of state in FY 2004 but also adds provisions for sending additional inmates out of state through FY 2007 and includes the contract submission requirement for those years.

**PLANS TO REDUCE INCARCERATION FOR
TECHNICAL VIOLATIONS OF CONDITIONS OF
PROBATION AND PAROLE (§ 26)**

The act requires:

1. the Judicial Branch to develop a plan to reduce by at least 20% the number of incarcerations due to technical violations of the conditions of probation, and
2. the Board of Parole (which becomes part of the new Board of Pardons and Paroles) and DOC to develop a plan to reduce by at least 20% the number of incarcerations due to technical violations of the conditions of parole.

The plans must include cost estimates. The Judicial Branch and Parole Board and DOC must submit their plans to the Appropriations and Judiciary committees by October 15, 2004 and, if they receive funding,

implement them and report again to the committees by August 15, 2005.

REENTRY STRATEGY (§ 29)

The act requires the Parole Board (which becomes part of the new Board of Pardons and Paroles), Judicial Branch, and the departments of Correction, Mental Health and Addiction Services, Social Services, and Labor to collaborate to develop and implement a comprehensive reentry strategy. The strategy must:

1. provide a continuum of custody, care, and control for offenders discharged from DOC custody;
2. assist in maintaining the prison population at or below authorized bed capacity;
3. support victims' rights;
4. protect the public; and
5. promote successful transition from incarceration to the community.

The act requires DOC to report annually on the success of the reentry strategy to the Appropriations, Judiciary, and Public Safety committees beginning January 1, 2005. It requires the strategy's success to be measured by the:

1. recidivism and community re-victimization rates;
2. number of inmates eligible for release on parole, transitional supervision, probation, or other release programs;
3. number of inmates who transition from incarceration to the community complying with a discharge plan;
4. prison bed capacity ratios;
5. adequacy of the network of community-based treatment, vocational, educational, supervision, and other services and programs; and
6. reinvestment of any savings from reducing the prison population into reentry and community-based services and programs.

**ADMINISTRATIVE PARDONS REGULATIONS (§
1(J)(2))**

The act requires the board chairman, in consultation with the executive director, to adopt regulations to establish an administrative pardons process that allows people convicted of a crime to receive a pardon without a hearing, unless a victim requests one, if the person was:

1. convicted of a misdemeanor and (a) it is no longer a crime, (b) he was under age 21 at the time of the conviction and has no convictions during the 10 years before receiving the pardon, or (c) he was convicted before pretrial programs were created that the person would

have been eligible for and likely participated in or

2. convicted of (a) illegal manufacture, distribution, sale, prescription, or dispensing drugs; (b) illegal manufacture, distribution, sale, prescription, or dispensing drugs by a non-drug-dependent person; or (c) illegal possession of drugs; and he has no convictions during the five years before receiving the pardon and it is at least five years since the person's conviction and release from prison.

The pretrial programs are the alcohol and drug dependency program, pretrial family violence education program, alternative incarceration program, community service labor program, accelerated rehabilitation, pretrial alcohol education program, pretrial drug education program, and pretrial school violence prevention program.

ELIGIBILITY FOR ALCOHOL AND DRUG DEPENDENCY DIVERSION PROGRAM (§ 23)

The law authorizes courts to order drug or alcohol dependent offenders into treatment in lieu of prosecution or incarceration. Under prior law, anyone who was previously ordered treated under this program or its earlier versions was ineligible. The act instead makes someone ineligible if he twice used one of these programs. The law allows the court to waive the eligibility rules.

By law, the pretrial diversion aspect of this program covers all drug sale and possession crimes. A person charged with driving under the influence; assault in the second degree with a motor vehicle; or a class A, B, or C felony is not eligible for suspended prosecution and treatment.

RECOVERING COSTS OF INCARCERATION

Property Subject to Claim (§ 17)

The law gives the state a claim for the costs of an inmate's incarceration on his estate, inheritance, and proceeds won in a lawsuit.

The act gives the state a claim against any property owned by an inmate except:

1. property that is statutorily exempt from execution to satisfy court judgments and exempt property of a farm partnership;
2. money from a contract for reenacting the inmate's violent crime in various media (such as movies and books) or from the expression of the person's thoughts or feelings about the crime which by law must be paid to the Office of Victim Services;
3. property acquired for work performed during incarceration as part of a program designated

or defined in DOC regulation as job training, skill development, a career opportunity, or an enhancement program; and

4. property the inmate acquired after he was released from incarceration.

But the state's claim does apply to lottery and pari-mutuel winnings after the person's release from prison; his estate, inheritance, and proceeds won in a law suit after his release from prison; and certain federal, state, or municipal pension, annuity, insurance contracts, and similar items that are for government employee retirement benefits (subject to the rights of an alternate payee under a qualified domestic relations order).

The act authorizes the attorney general to bring an action to enforce the claim in Superior Court in the Hartford judicial district at the DOC commissioner's request. The action must be brought within two years of the inmate's release from prison or within two years of his death if he dies while in DOC custody. This restriction does not apply to property that is fraudulently concealed.

The act's provisions on property subject to state claim apply to actions and proceedings pending or commencing on or after its effective date.

Limitation on Claims (§§ 18-19)

The act limits the state's claim to an inmate's estate, lawsuit proceeds, and inheritance to (1) the estate of someone who dies within 20 years of his release from incarceration, (2) lawsuits brought within 20 years of release, and (3) inheritances received within 20 years of release.

Employment and Services Performed by Inmates (§§ 20, 16)

By law, DOC can allow inmates to participate in a labor program with private industry and work-release and education-release programs. Any compensation inmates earn must be paid to DOC and put into an account for the inmate. The money can be used for one of eight prioritized purposes. The act changes the eighth priority from paying the inmate's costs of board as determined by the DOC commissioner to the inmate's cost of incarceration as determined by the statutes and regulations. Similarly, it requires a self-employed inmate to pay the costs of incarceration rather than the costs of his board.

By law, compensation rates are set for services performed by inmates for the state. The money they earn is paid to them on discharge unless the prison warden or administrator pays it for one of nine prioritized purposes. The act changes the eighth priority from paying the inmate's costs of board as determined by the DOC commissioner to the inmate's cost of

incarceration as determined by the statutes and regulations.

CREDIT FOR FINES (§§ 12-13)

The act changes the credit that a person receives for time spent in prison for a crime when he is held in prison only for payment of a fine. It changes the credit from \$50 a day to a rate equal to the average daily cost of incarceration, as determined by the DOC commissioner. By law, the person is released when the amount of the credit equals the amount of the fine.

The act changes the credit that a person receives for time spent in pre-sentence confinement (confinement by order or because he was denied or could not obtain bail) toward payment of a fine imposed after conviction. The act changes the credit from \$50 per day to a rate equal to the average daily cost of incarceration, as determined by the DOC commissioner.

JUVENILES' CREDIT FOR PRE-SENTENCE CONFINEMENT (§ 24)

The act gives a child (under age 16) arrested and held in certain facilities before disposition of his juvenile matter, credit toward his period of probation (including any extensions) for each day spent in the facility if he is later sentenced to probation after conviction as a delinquent in Superior Court. This applies to time spent in a detention center, alternative detention center, police station, or courthouse lock-up.

OTHER PROVISIONS

Prison and Jail Overcrowding Commission (§§ 14, 34)

The act adds the Mental Health and Addiction Services (DMHAS) commissioner, or his designee, to the membership of the Commission on Prison and Jail Overcrowding. It also adds the Board of Parole (which becomes part of the new Board of Pardons and Paroles) chairman, or his designee, to the commission. The act also allows the DOC and Public Safety commissioners to designate someone to serve in their places on the commission.

The act requires the commission to establish a subcommittee on corrections behavioral health to make recommendations on providing behavioral health services to inmates. The subcommittee consists of the DOC and DMHAS commissioners and a representative of the University of Connecticut Health Center who is responsible for administering the health care services contract for DOC inmates.

Commitment to DOC by Board Chairman (§ 7)

The act requires the Parole Board chairman to sign an order to commit a person on special parole to a correctional institution.

Claims on Inheritance for State Aid (§ 15)

By law, when a beneficiary of aid under the State Supplement, Medical Assistance, Aid to Families with Dependent Children, Temporary Family Assistance, or State Administered General Assistance programs receives an inheritance, 50% of the assets payable to the beneficiary up to the amount of the assistance paid is assignable to the state.

The act also gives the state a lien on the assets. As with assignments, the act requires the probate court to accept notice of the lien if the Department of Administrative Services commissioner files it with the court before distributing the inheritance and the court distributes assets accordingly.

Required Studies (§§ 22, 25)

The act requires the Legislative Program Review and Investigations Committee (LPRIC) and Office of Fiscal Analysis to review the act's implementation and measure its effects. This includes studying the (1) effect on the prison population and (2) cost savings and the extent they are reinvested in improving community safety and ensuring successful transition of ex-offenders to the community. The report is due to the Appropriations and Judiciary committees by January 1, 2006 and 2008.

The act also requires the LPRIC to study the:

1. impact of laws requiring mandatory minimum sentences on the demand for prison beds,
2. actual versus intended impact of mandatory minimum sentences on the state's overall sentencing policy, and
3. estimated cost of mandatory minimum sentences and proposed sentencing changes.

LPRIC must report to the Judiciary Committee by January 1, 2006.

BACKGROUND

Work and Education Release Program

The work and education release law allows DOC to arrange for continued employment of an inmate who is self-employed or regularly employed. DOC can also attempt to secure suitable employment or attendance at an educational institution. The prisoner's employment must (1) not displace employed workers, involve skills or trades that have a surplus of labor in the locality, or

impair existing contract and (2) have pay and employment conditions that are not less than those for similar work at the locality.

Commission on Prison and Jail Overcrowding

The commission (1) develops and recommends policies to prevent prison overcrowding, (2) examines the impact of statutes and administrative policies on overcrowding and recommends legislation, and (3) annually prepares and distributes a comprehensive state criminal justice plan for preventing overcrowding.

Related Acts

PA 04-257 makes conforming changes regarding parole officers, the Parole Board, and DOC supervision of parolees.

PA 04-2, May Special Session limits the DOC commissioner's authority to send additional inmates out of state in FY 05 to an additional 1,000 rather than 2,000 inmates and authorizes the commissioner to contract with a government or private vendor to supervise up to an additional 1,000 inmates out of state during FYs 2006 and 2007.

The budget act (PA 04-216, § 43) carries forward and transfers \$1.25 million from DOC's Personal Services Account to Other Expenses for use in performing mental health assessments of prisoners housed at Northern Correctional Center. PA 04-2, May Special Session also permits DOC to use these funds for paying plaintiffs' attorneys fees.

PA 04-239—HB 5606 *Judiciary Committee*

AN ACT CONCERNING PENALTIES AND THE RECOVERY OF DAMAGES FOR THE UNLAWFUL KILLING OR INJURING OF A COMPANION ANIMAL

SUMMARY: This act makes anyone who intentionally kills or injures a companion animal liable to its owner for economic damages the owner sustains. Case law already makes people liable for such conduct, but it does not clearly indicate what type of compensatory damages a court may award. The act specifies that these damages include veterinary care, the animal's fair monetary value, and burial expenses, if applicable. This liability does not apply if the law authorizes the person to kill or injure the animal or if the person was defending himself or another person.

The act defines "companion animal" as a domesticated dog or cat that is normally kept in or near its owner's or keeper's home and depends on a person

for food, shelter, and veterinary care. The definition excludes a dog or cat kept for farming or biomedical research.

Under case law, people are liable for punitive damages in such lawsuits up to the cost of litigation plus attorney's fees. The act expands this liability by authorizing the court to also award punitive damages in an amount up to the Small Claims Court jurisdictional monetary limit (currently \$3,500). But it excludes from this financial liability certain classes of people, such as licensed veterinarians, who follow accepted standards of practice.

By law, it is a crime to kill, injure, or steal a dog or engage in certain behavior with intent to steal a dog. The act (1) expands this law to all companion animals and (2) increases the penalties.

EFFECTIVE DATE: October 1, 2004

PUNITIVE DAMAGES—EXCLUSIONS

The act excludes from the court's authority to award punitive damages (1) a licensed veterinarian following accepted standards of practice of the profession; (2) the state, any of its political subdivisions, or their employees, officers, or agents while acting within the scope of their employment or official duties; or (3) employees of, or volunteers for, a nonprofit entity organized and operated exclusively for preventing cruelty to animals or protecting stray, abandoned, or mistreated animals, while acting within the scope of their employment or duties.

CRIMINAL PENALTIES

By law, it is a crime to (1) steal, confine, or conceal any dog; (2) remove the animal's collar, harness, or tag with the intent to steal it or conceal its or its owner's identity or with the intention to conceal the fact that the dog is licensed; or (3) unlawfully kill or injure a dog. The act expands this law to include all companion animals.

The act increases the maximum fine from \$200 to \$1,000, for a first offense, and from \$500 to \$2,000, for a second offense and for an offense involving more than one dog or cat. The possible prison terms remain the same (1) up to six months for a first offense, and (2) from one to three years for a second offense or an offense involving more than one dog or cat.

BACKGROUND

Related Case Law

Under Connecticut case law, someone who willfully, wantonly, or negligently kills or injures an animal is liable to the animal's owner for damages

(*Soucy v. Wysocki* 139 Conn. 162 (1953); *Griffin v. Fancher* 127 Conn. 686 (1941)). There is little case law in Connecticut on the nature of compensatory damages available for killing or injuring an animal.

Also under Connecticut case law, someone who willfully, wantonly, or maliciously, harms someone or his property is liable for punitive damages in addition to compensatory damages (*Lentine v. McAvoy*, 105 Conn. 528; Connecticut Law of Torts, Section 174). Punitive damages authorized by case law are limited to the actual cost of the litigation plus attorney's fees (*Markey v. Santangelo*, 195 Conn. 76, (1985)).

Related Statutes

Under state law, dogs are deemed to be personal property, and anyone who steals them is subject to the larceny laws. Anyone who steals any property, or knowingly receives and conceals it, is liable to the owner for three times his damages.

PA 04-240—sHB 5625

Judiciary Committee

AN ACT CONCERNING CORPORATIONS AND OTHER BUSINESS ENTITIES, AIRCRAFT AND VESSEL LIENS, JURISDICTION OVER FOREIGN VOLUNTARY ASSOCIATIONS, CERTAIN SPECIALLY CHARTERED CORPORATIONS AND PROPERTY TAX EXEMPTIONS FOR CERTAIN HOUSING OPERATED BY CHARITABLE ORGANIZATIONS

SUMMARY: This act requires that the name of a domestic corporation, limited partnership, limited liability company (LLC), and domestic and foreign limited liability partnership (LLP) be distinguishable upon the records of the secretary of the state from the name of any other entity whose name is carried upon the secretary's records as organized or authorized to transact business or conduct affairs in this state. ("Domestic" refers to an entity that is organized under Connecticut law. "Foreign" refers to an entity that is organized under the laws of some other state.)

The act expands the types of entities that can act as agents to receive process (legal papers, especially those that institute legal proceedings) for domestic and foreign stock and nonstock corporations, limited partnerships, LLCs, LLPs, and statutory trusts.

The act requires an LLC to file an interim notice of change of manager or member if the manager or member named in its most current annual report is replaced after the LLC has filed its annual report, but not later than 30 days preceding the month during which

its next annual report becomes due. The act requires the notice to contain certain information.

By law, a vessel or aircraft lienor who gains possession of the vessel or aircraft must file notice of lien with the secretary of the state. The act requires that the lienor file two instead of four copies.

The act adds foreign voluntary associations to the list of entities over which Connecticut courts can assert jurisdiction if they engage in certain conduct.

The act specifies that any rent tenants pay a charitable organization for short-term housing it operates is exclusively for charitable purposes, thus maintaining the housing's property-tax-exempt status. The law already exempted from tax liability short-term housing that a charitable organization operates, but was silent on rental income.

The act amends the special act that established the Odd Fellows' Home of Connecticut by expanding its permissible purposes.

The act amends several provisions of special acts concerning the Bacon Academy and the corporation known as The Trustees and Proprietors of Bacon Academy.

EFFECTIVE DATE: October 1, 2004, except for the provision dealing with jurisdiction over foreign voluntary associations, which is effective upon passage.

AGENTS FOR SERVICE OF PROCESS

By law the following entities must have and maintain an agent for service of process: domestic and foreign stock and nonstock corporations, limited partnerships, LLCs, LLPs, and statutory trusts. By law, they may select certain entities to act as agent but previously the selections were not uniform.

The act allows each of them to also select any of the following to serve as their agent:

1. a domestic registered LLP,
2. a foreign registered LLP that has procured a certificate of authority to transact business or conduct its affairs in this state,
3. a domestic statutory trust, or
4. a foreign statutory trust that has procured a certificate of registration to transact business or conduct its affairs in this state.

In addition, the act authorizes domestic and foreign stock and nonstock corporations, limited partnerships, LLCs, LLPs, and foreign statutory trusts to also appoint various other entities as statutory agent as specified below.

Domestic Stock Corporations

The act requires that, to be selected as agent for service of process by a stock corporation, a foreign LLC

must have procured a certificate of registration instead of a certificate of authority.

The act requires that the appointment of a registered agent be in writing and signed by the registered agent who is appointed. If a natural person is appointed as the registered agent, the act eliminates the requirement that the appointment include the agent's written consent to the appointment.

Foreign Stock Corporations

The act allows a foreign corporation to select as agent for service of process:

1. a foreign corporation that has procured a certificate of authority to conduct its affairs in Connecticut,
2. a domestic LLC, or
3. a foreign LLC that has procured a certificate of registration to transact business or conduct its affairs in this state.

The act requires that the appointment of a registered agent be in writing and signed by the registered agent that is appointed. If a natural person is appointed as the registered agent, the act requires that the appointment include the residence address.

Domestic Nonstock Corporations

By law, each domestic nonstock corporation must continuously maintain in this state a registered office that may be the same as any of its places of business, and a registered agent at the registered office.

The act requires that the appointment of a registered agent be in writing and signed by the registered agent that is appointed. It eliminates the requirement that, if a natural person is appointed as the registered agent, the appointment include the person's written consent to the appointment.

Foreign Nonstock Corporation

The act allows a foreign nonstock corporation to also select as an agent for process:

1. a domestic LLC or
2. a foreign LLC that has procured a certificate of registration to transact business or conduct its affairs in this state.

The act requires the appointment of the registered agent to be in writing and to be signed by the registered agent. If a natural person is appointed as the registered agent, the appointment must include the agent's residence.

Limited Partnerships

The act also allows a limited partnership to select as an agent for service of process:

1. a foreign corporation that has procured a certificate of authority to conduct its affairs in this state,
2. a domestic LLC, or
3. a foreign LLC that has procured a certificate of registration to transact business or conduct its affairs in this state.

Foreign Limited Partnerships

The act authorizes a foreign limited partnership to also appoint as agent for service of process:

1. a foreign corporation that has procured a certificate of authority to conduct its affairs,
2. a domestic LLC, or
3. a foreign LLC that has procured a certificate of registration to transact business or conduct its affairs in this state.

Domestic LLC

The act authorizes an LLC to also appoint as agent for service of process:

1. a foreign corporation that has procured a certificate of authority to transact business or conduct its affairs in this state,
2. a domestic LLC, or
3. a foreign LLC that has procured a certificate of registration to transact business or conduct its affairs in this state.

Foreign LLC

The act authorizes a foreign LLC to also appoint as agent for service of process a foreign corporation or LLC that has procured a certificate of authority to conduct its affairs in this state.

Limited Liability Partnership

The act allows an LLP to also appoint as agent for service of process a domestic statutory trust or a foreign statutory trust that has procured a certificate of registration to transact business or conduct its affairs in this state.

Domestic and Foreign Statutory Trust

By law, each foreign statutory trust must, before transacting business in this state, appoint in writing an agent upon whom all process, in any action or proceeding against it, may be served.

The act also authorizes a foreign statutory trust to select as agent for service of process:

1. a foreign corporation that has procured a certificate of authority to conduct its affairs in this state or
2. a foreign LLC that has procured a certificate of registration to conduct its affairs in this state.

The act authorizes a domestic statutory trust also to select as agent for service of process:

1. a domestic registered LLP or
2. a foreign registered LLP that has procured a certificate of authority to transact business or conduct its affairs in this state.

LLC ANNUAL REPORTS-CHANGE OF MANAGERS

By law, each domestic and foreign LLC must file an annual report with the secretary of state that includes certain information. The act requires the LLC to file an interim notice of change of manager or member if the manager or member named in its most current annual report is replaced after the LLC has filed its annual report, but not later than 30 days before the month during which its next annual report becomes due.

The act requires the interim notice to specify (1) the LLC's name and (2) the name, title, and business and residence addresses of the new manager or member and the name and title of the former manager or member. But, if good cause is shown, the secretary of the state may accept a business address instead of the business and residence addresses of the new manager or member. Any such change of manager or member that occurs within the 30-day period preceding the month during which the LLC's next annual report becomes due must be reflected in the next annual report.

FOREIGN LLC-ANNUAL REPORT-ADDRESSES

A foreign LLC registered to transact business in this state must file an annual report in the office of the secretary of the state in which it must specify certain information. The act requires that it also include the name and business and residence addresses of a manager or a member of the foreign LLC. But, if good cause is shown, the act allows the secretary of the state to accept a business address instead of the business and residence addresses of the manager or member.

The act specifies that good cause includes a showing that public disclosure of their residence address may expose their personal security to a significant risk.

FOREIGN VOLUNTARY ASSOCIATION

The act allows Connecticut courts to exercise personal jurisdiction over any foreign voluntary association that, in person or through an agent:

1. transacts any business within the state;
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act;
3. commits a tortious act outside the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if the person or agent (a) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (b) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce;
4. owns, uses, or possesses any real property located in the state; or
5. uses a computer or a computer network located in the state.

The act specifies that the foreign voluntary association is deemed to have appointed the secretary of the state as its attorney and to have agreed that any process in any civil action brought against it may be served upon the secretary of the state and has the same validity as if served upon the association.

RENT PAID TO CHARITABLE ORGANIZATIONS

The law specifies that a property tax exemption applies to temporary housing owned by, or held in trust for, a federally tax-exempt, exclusively charitable organization and used primarily as one or more of the following:

1. an orphanage;
2. a drug or alcohol treatment or rehabilitation facility;
3. housing for homeless, retarded, or handicapped people or battered or abused women and children;
4. housing for ex-offenders or participants in Judicial Branch- or Department of Correction-sponsored programs; or
5. short-term housing where the average stay is less than six months.

The act specifies that any rent tenants pay a charitable organization for this short-term housing it operates is exclusively for charitable purposes, thus maintaining the housing's tax-exempt status.

BACKGROUND

Related Case

The Connecticut Supreme Court, in a case involving statutory construction, ruled that the charitable property tax exemption does not apply to housing owned by a charitable corporation, if the corporation collects rent from people living there (*The Fanny J. Crosby Memorial, Inc. v. City of Bridgeport*, 262 Conn. 213 (December 2002)).

PA 04-257—sSB 604

Judiciary Committee

AN ACT CONCERNING THE REVISOR'S TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AND CERTAIN PUBLIC ACTS

SUMMARY: This act (§§ 114-123, 125) makes changes to statutes regarding parole officers to conform to PA 04-234, which (1) combines the Board of Pardons and Board of Parole into the Board of Pardons and Paroles, (2) makes the new board part of the Department of Correction (DOC) for administrative purposes only, and (3) makes DOC responsible for supervising parolees.

The act (§ 124) allows a paroled inmate returned to DOC custody to be placed in any correctional institution, not just the one he was paroled from. (PA 04-234, § 8 makes this change also.)

PA 04-234 removed the court's discretion to depart from a mandatory minimum sentence for certain drug crimes under certain circumstances. This act reestablishes this discretion (§ 136).

PA 04-139 prohibited people convicted of crimes requiring sex offender registration from using computers while incarcerated. This act, instead, prohibits them from using computers with Internet access.

The act makes numerous changes to PA 04-155 relative to medical malpractice lawsuits. Because the governor vetoed PA 04-155, these changes have no legal effect.

Finally, the act makes numerous technical changes to various statutes and public acts.

EFFECTIVE DATE: Upon passage, except for the provisions dealing with new home construction contractors and possession of potentially dangerous animals, which take effect July 1, 2004, and the provision dealing with the Connecticut Siting Council and the Public Utility Environmental Act, which takes effect October 1, 2004.

PA 04-13—sHB 5400

*Labor and Public Employees Committee
Education Committee*

**AN ACT CONCERNING PAYMENT SCHEDULES
FOR NONCERTIFIED EMPLOYEES**

SUMMARY: With two exceptions, the law requires employers to pay all wages (1) weekly on a regular pay day and (2) no more than eight days after the end of the pay period the wages cover. Exempt from this requirement are employers of certified (teachers and administrators) and noncertified school district employees working in instructional or administrative jobs. This act extends the exemption to all noncertified school employees regardless of their duties (e.g., cafeteria or maintenance staff). It allows local and regional boards of education and unions representing their noncertified employees to establish different wage payment schedules in their union contracts.

EFFECTIVE DATE: July 1, 2004

PA 04-60—sHB 5058

*Labor and Public Employees Committee
Finance, Revenue and Bonding Committee*

**AN ACT CONCERNING INTEREST ON
FRAUDULENT UNEMPLOYMENT
COMPENSATION OVERPAYMENTS AND A FEE
FOR FAILURE BY CONTRIBUTING
EMPLOYERS TO FILE TIMELY
UNEMPLOYMENT COMPENSATION
QUARTERLY RETURNS**

SUMMARY: This act (1) requires the Department of Labor (DOL) to charge 1% interest per month on fraudulent unemployment compensation overpayments made on or after July 1, 2005 and (2) creates a \$25 late fee for employers who do not file the required quarterly employee wage reports on time. It requires these interest payments and fees to be deposited in the Employment Security Administration Fund.

It also reduces the minimum forfeiture penalty in cases of fraudulent claims from two weeks of unemployment benefits to one week.

EFFECTIVE DATE: July 1, 2004

INTEREST ON FRAUDULENT OVERPAYMENTS

DOL's Employment Security Division recovers fraudulent overpayments of unemployment compensation. As with overpayments under prior law, the act specifies that the interest provision is triggered when the state cannot regain the overpayment by reducing the recipient's ongoing unemployment benefits

(i.e., the individual is no longer receiving benefits). For overpayments made starting July 1, 2005, the act requires the division to calculate interest of 1% per month on the overpaid amount. It authorizes the division to deduct the interest from the person's wages as is already permitted for overpayment collections.

FORFEIT OF BENEFITS DUE TO FRAUD

Under prior law, anyone found to have knowingly made a false statement or misrepresentation in a compensation claim or to have failed to disclose a material fact to obtain benefits had to forfeit from two to 39 weeks worth of compensation. The act reduces the minimum forfeiture to one week's worth.

BACKGROUND

Quarterly Wage Reports

By law, all employers subject to unemployment compensation rules must provide the Employment Security Division with quarterly reports listing wage information, including each employee's name, Social Security number, and wages in that quarter.

PA 04-68—HB 5394

Labor and Public Employees Committee

**AN ACT CONCERNING GRATUITIES IN THE
HOTEL AND RESTAURANT INDUSTRY**

SUMMARY: This act makes permanent the temporary tip credit for hotel and restaurant employers by removing the sunset clause enacted when the credit was changed three years ago. The credit allows hotels and restaurants to pay service employees and bartenders, who customarily and regularly receive tips, less than minimum wage as long as tips make up the difference. The current minimum wage is \$7.10 an hour. With the tip credit, the minimum is \$5.02 for service employees and \$6.52 for bartenders.

Under prior law, the 29.3% tip credit for hotel and restaurant service employees and 8.2% credit for bartenders would have expired on December 31, 2004, at which point the service employees' credit would revert to 23% and the bartenders' credit would expire. The act makes the higher tip credit permanent.

EFFECTIVE DATE: January 1, 2005

PA 04-95—sSB 327

*Labor and Public Employees Committee
Public Health Committee*

AN ACT CONCERNING FAMILY AND MEDICAL LEAVE FOR ORGAN DONATION

SUMMARY: This act provides unpaid leave for state and private sector employees to donate an organ or bone marrow under the state's two family and medical leave acts (FMLAs), which provide such employees with unpaid leave for (1) the birth or adoption of a child or (2) serious illness of the employee or his child, spouse, or parent. While the two laws are similar, they differ in the maximum amount of unpaid leave allowed over two years: 24 weeks under the state employee FMLA and 16 weeks under the private sector FMLA. Both laws require an employee to get his original job back, or an equivalent one, upon return from leave.

The act requires written physician certification for state employee organ or bone-marrow donation before the leave starts, but it does not require similar certification for private sector employees. Existing law requires physician certification for leaves involving illness or medical treatment for both private and state employees.

EFFECTIVE DATE: October 1, 2004

FMLA REQUIREMENTS

State Employee Physician Certification

The act requires an employee seeking leave to donate an organ or bone marrow to provide written certification from his physician of the proposed donation and the employee's probable recovery time. This is similar to the written physician certification the employee must provide when taking leave for his own or a qualifying relative's illness.

Private Sector Provisions

The act requires an employee seeking leave to donate an organ or bone marrow to make a reasonable effort to schedule the procedure, with approval of the health care provider, so as not to disrupt unduly the employer's operation and, when possible, must provide at least 30-days notice before the leave begins.

When an employee requests intermittent leave or a reduced schedule that is foreseeable based on the organ or bone-marrow donation, the employer can temporarily transfer the employee to an available alternative position, with the same pay and benefits, that better accommodates the recurring leave periods. This arrangement must not conflict with any prevailing collective bargaining agreement.

The act specifies employees eligible for the donor leave may elect, or the employer may require them, to use any accrued paid vacation, personal, or sick leave for part of the FMLA leave. All the above provisions, for procedure scheduling, intermittent leave, and use of accrued paid leave, already apply to leave requests for the employee's or qualifying relative's serious health condition.

BACKGROUND

Family and Medical Leave Acts

Including federal law, there are three separate FMLAs that apply to employees in Connecticut and each gives unpaid leave for similar purposes:

1. The 1993 federal FMLA applies to (a) all private employers with 50 or more employees in a 75-mile radius and (b) the federal government, states, municipalities, and private and public school districts regardless of the number of employees. To be eligible, an employee must have worked at least 1,250 hours for his employer in the previous 12 months.
2. The state private sector FMLA applies to all private sector employees with 75 or more employees. It specifically exempts the state, municipalities, local and regional boards of education, and private and parochial schools. An eligible employee must have worked at least 1,000 hours for his employer in the previous 12 months.
3. The state employee FMLA, part of the State Personnel Act, covers only permanent state employees. Both state laws were enacted before the federal law.

PA 04-102—SB 57

*Labor and Public Employees Committee
Government Administration and Elections Committee
Judiciary Committee*

AN ACT CONCERNING DEBARMENT REFORM

SUMMARY: This act expands the state's debarment law by barring general contractors on public construction projects from awarding work to subcontractors that have violated the prevailing wage law. The state's debarment law already prohibits state and municipal agencies from awarding contracts to general contractors that have violated the prevailing wage law.

The act also establishes a \$1,000-per-day civil penalty for prevailing wage violators that perform work on a public construction project.

EFFECTIVE DATE: October 1, 2004

CONTRACTOR DEBARMENT

By law, the labor commissioner must maintain a list of contractors and firms that have violated state or federal laws requiring them to pay prevailing wages to employees and subcontractors employed on state and municipal public works and state highway contracts. The list (known as the debarment list) must include contractors that have an ownership interest of 10% or more in any firm on the list. State and municipal agencies are prohibited from awarding contracts to listed firms. The debarment runs for three years from the date the contractor is listed.

The act bars general contractors that enter into state or municipal public works or state highway contracts subject to the state prevailing wage from awarding any work to a subcontractor on the list. This prohibition also runs for three years.

Before a subcontractor can perform any work on a prevailing wage project, he must submit a sworn affidavit to the general contractor that he does not hold a 10% or greater interest in any firm on the list. The general contractor satisfies the requirement not to hire debarred subcontractors when he obtains and holds such an affidavit from each hired subcontractor.

PENALTY

The act imposes a \$1,000-per-day civil penalty on any contractor on the list that performs any work on a prevailing wage project. The attorney general, at the request of the labor commissioner, must sue to recover the penalty. The penalties must go to the General Fund as a nonlapsing appropriation to the Labor Department for other current expenses. The department can use the money to enforce the provisions of the prevailing wage laws and other employment regulations. Under prior law there was no fine for contractors on the debarment list that perform work on a prevailing wage project.

PA 04-118—HB 5054

*Labor and Public Employees Committee
Government Administration and Elections Committee*

AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD

SUMMARY: This act allows nonunion executive branch civil service managers to appeal directly, as a group, to the Employees' Review Board in certain

circumstances including layoffs and dismissals. By law, individual nonunion employees can, under most circumstances, appeal an employment-related issue to the board only after going through a three-stage grievance procedure.

The act extends the hearing and related provisions that apply to individual appeals to such group appeals. By law, the board hears complaints from nonunion state employees regarding issues such as unsatisfactory performance evaluations, demotions, suspensions, or dismissals.

It also makes technical changes.

EFFECTIVE DATE: October 1, 2004

GROUP APPEALS TO THE BOARD

By law, a nonunionized permanent state employee can appeal to the board after going through a grievance procedure. The procedure usually involves the following three levels: (1) his immediate supervisor, (2) his appointing authority (e.g., his agency commissioner), and (3) the Office of Policy and Management (OPM) secretary. (The latter two can name designees to hear grievances.) An individual can grieve:

1. an unsatisfactory performance evaluation;
2. dismissal, demotion, or suspension; or
3. harm due to (a) alleged discrimination, (b) unsafe working conditions, or (c) interpretation of a personnel regulation or rule.

Cases involving dismissal, demotion, or suspension must go directly to the third level of the grievance procedure.

The act allows any group of permanent, nonunion, civil service employees (executive branch managers) to appeal directly, as a group, to the board if they are (1) laid off or dismissed or (2) harmed by (a) alleged discrimination; (b) unsafe or unhealthy working conditions; or (c) the interpretation and application of a specific state personnel statute, regulation, or rule.

Each member of the group must be (1) appealing the same or similar issue as determined by the Employees' Review Board and (2) an employee holding a permanent civil-service appointment. The group must submit its appeal to the board within 30 days of the specific incident or effective date of the action that caused the complaint.

The act extends provisions that apply to individual appeals to group appeals. Among other things, these provisions (1) require the board to name a panel to hear the appeal and require the panel to issue its decision within 60 days of the end of the hearing; (2) bar state officers or employees from retaliating against employees who appeal to the board; and (3) allow employees or the OPM secretary, if aggrieved by the board's decision, to appeal it to the courts.

By law, individual employees can appeal layoffs and dismissals that arise from certain causes only on the grounds that the dismissal or layoff has not complied with relevant state law. The causes are lack of work, economy, insufficient appropriation, change in department organization, or abolition of a position. The act extends these provisions to group appeals. Such appeals must be made to the board no later than 30 days from the effective date of the layoff or dismissal. By law, the employee can appeal to the board under these circumstances only if he has initiated the third stage of the grievance procedure within 30 days of the layoff or dismissal.

PA 04-133—sHB 5448

*Labor and Public Employees Committee
Public Safety Committee
Appropriations Committee*

**AN ACT CONCERNING STATE POLICE
CRUISERS**

SUMMARY: This act requires each state police patrol car purchased on or after January 1, 2006 to be equipped with a manufacturer-installed fire-suppression system. It defines fire-suppression system as a system integrated into the vehicle's structure and electronic architecture that (1) uses sensors to measure post-impact vehicle movement to determine the best time to release chemicals to suppress the spread of fire or extinguish a fire caused by a high-speed, rear-end collision and (2) may be activated both manually and automatically.

EFFECTIVE DATE: October 1, 2004

PA 04-162—SB 431

*Labor and Public Employees Committee
Judiciary Committee*

**AN ACT CONCERNING THE MONITORING OF
METAL DETECTORS AT CORRECTIONAL
INSTITUTIONS**

SUMMARY: This act creates a mandatory search procedure for visitors to correctional department facilities who set off walk-through metal detectors. If the visitor still wants to enter the facility, he must submit to a second metal detector search in a private location after he removes any clothing that may have triggered the detector.

Under the act, a visitor who activates the metal detector must be allowed to submit to a second search with a portable or hand-held metal detector. If he consents, he will be escorted by a correction officer of

the same sex to a separate room, restroom, or other private location in the correctional institution where he must remove any object or article of clothing that may have activated the walk-through metal detector and submit to a portable or hand-held detector search. If the search does not activate the detector, the visitor must be allowed to put on the object or article of clothing before exiting the private location and enter the correctional institution. If the detector is activated during the second search, the visitor must be escorted out of the correctional facility.

The act requires that any visitor consenting to a second search in order to visit an inmate must be afforded the entire time allotted for such visit starting from the time the visitor is cleared for access. The act specifies that (1) this requirement does not mean a correctional facility must extend or change its regular visiting hours and (2) the time afforded to any such visitor must be reduced by the amount of time the visitor is late in arriving for a scheduled visit.

EFFECTIVE DATE: Upon passage

PA 04-167—sSB 56

*Labor and Public Employees Committee
Public Health Committee*

**AN ACT CONCERNING THE CONNECTICUT
HEALTH AND EDUCATIONAL FACILITIES
AUTHORITY AND THE REFINANCING OF
DEBT OF CERTAIN NURSING HOMES**

SUMMARY: This act expands the Connecticut Health and Educational Facilities Authority's (CHEFA) authority to refinance or restructure nursing home projects by issuing bonds secured by a state-backed special capital reserve fund (SCRF). Under prior law, after June 4, 1998, CHEFA could only issue new SCRF-backed bonds to retire other SCRF-backed bonds.

Under prior law, CHEFA and the state treasurer had to approve use of SCRF-backed bonds to retire other SCRF-backed nursing home project bonds. This act requires them to approve the use of such bonds for project refinancing and restructuring. In addition, it requires the Office of Policy and Management (OPM) secretary also to approve the use of SCRF-backed bonds for nursing home project bond retirement, refinancing, or restructuring.

Finally, the act allows CHEFA to use SCRF money to reimburse bond insurance, credit, or liquidity facility providers for bond redemption premiums they pay on CHEFA bonds, instead of only to pay such premiums directly.

CHEFA is a quasi-public agency that finances hospital and nursing home projects and dormitory and

other projects and improvements at public higher education institutions.

EFFECTIVE DATE: Upon passage

USE OF SCRF-BACKED BONDS

The act expands CHEFA's authority to issue new SCRF-backed bonds for nursing home projects by allowing such bonds, under certain circumstances, to be used to:

1. refinance or restructure, instead of only retire, other SCRF-backed nursing home project bonds;
2. refinance, restructure, or retire bonds issued on a pool or group obligation basis for projects with more than one participating nursing home; and
3. replace both SCRF-backed and non-SCRF-backed bonds, rather than only the former.

BOND APPROVAL CONDITIONS

By law, before issuing any SCRF-backed bonds, CHEFA generally must find that project revenues are sufficient to (1) pay off the bonds used to finance it, (2) maintain any reserves the authority thinks advisable to secure their repayment, (3) cover the cost of maintaining and insuring the project, and (4) pay any other required project costs. But, under prior law, special findings were required for nursing home project bond retirements that occurred in the context of a receivership, bankruptcy, or insolvency. The act both changes the special findings and extends their applicability to any nursing home project financial restructuring, instead of only to bond retirements undertaken in the context of a receivership, bankruptcy, or insolvency.

Under prior law, before issuing SCRF-backed bonds to retire other bonds in a nursing home receivership, bankruptcy, or insolvency situation, CHEFA and the state treasurer had to determine that (1) the aggregate debt service on the new bonds would be less than for the retired bonds and (2) the state would receive the economic benefit of the transaction. Under the act, when issuing SCRF-backed bonds to retire, refinance, or restructure other SCRF-backed nursing home project bonds, CHEFA, the treasurer, and the OPM secretary must instead determine that the state's aggregate liability for the new bonds will be lower than for the previous ones and that the transaction is in the state's best interest.

To effectuate a nursing home project bond retirement, refinancing, or restructuring, the act also allows CHEFA, the treasurer, and the OPM secretary to waive or modify other statutory requirements and conditions for issuing SCRF-backed bonds, including

the requirements for findings regarding the sufficiency of project revenues. But it makes any waivers and modifications subject to applicable CHEFA or state tax covenants.

PA 04-178—sHB 5392

Labor and Public Employees Committee

Judiciary Committee

Government Administration and Elections Committee

AN ACT CONCERNING ENFORCEMENT OF THE PERSONNEL FILES ACT

SUMMARY: This act authorizes the labor commissioner to subpoena people and records in order to investigate complaints related to employee personnel and medical records kept by private-sector employers under the Personnel Files Act. It specifies that the commissioner may subpoena (1) an employer who is the subject of a complaint under the act, (2) the employee who filed the complaint, (3) any other person having custody or control of the employee's records, and (4) any person whose testimony may be pertinent to the investigation. Only records and documents of the complaining employee may be subpoenaed. When a party refuses to obey a subpoena, the act empowers the Superior Court to issue an order, upon the commissioner's request, enforcing the subpoena. Prior law contained no enforcement mechanism for the commissioner in private-sector personnel records matters under the act.

The act also makes documents obtained by a subpoena confidential and exempt from disclosure under the Freedom of Information Act.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Personnel Files Act

This law imposes certain requirements on employers who keep employee personnel and medical records. The employers must allow employees access to personnel files, and in the case of medical files, allow access by a physician chosen or approved by the employee. Employers must maintain both types of files for a certain period following the end of the worker's employment with that company and must abide by other statutory requirements.

PA 04-179—HB 5399*Labor and Public Employees Committee
Appropriations Committee***AN ACT CONCERNING CONTRIBUTIONS DUE
THE UNEMPLOYMENT COMPENSATION
FUND**

SUMMARY: This act authorizes the labor commissioner or his agent to make or consider a compromise offer for overdue unemployment compensation taxes because of doubt over (1) the correct amount the employer owes or (2) the collectibility of the full amount. Under the act, doubt over the correct amount owed exists if there is a genuine dispute about the existence or amount of the employer's liability under the unemployment statutes. Doubt over collectibility exists if the employer's assets and income are less than the amount of its debts, obligations, and liabilities under state or federal law.

By law, the commissioner can place a lien on an employer's real or personal property to collect overdue taxes or forgive overdue taxes that he determines are uncollectible.

EFFECTIVE DATE: July 1, 2004

PA 04-214—sHB 5340*Labor and Public Employees Committee***AN ACT CONCERNING LUMP SUM PAYMENTS
UNDER THE WORKERS' COMPENSATION ACT
AND DISQUALIFICATIONS AND OFFSETS
UNDER THE UNEMPLOYMENT
COMPENSATION ACT**

SUMMARY: This act eliminates the unemployment compensation benefit reduction for individuals receiving a Social Security pension. Under prior law, Connecticut reduced an individual's weekly unemployment benefit by an amount equal to 50% of his prorated weekly Social Security pension. By eliminating the reduction, the act allows an individual to receive all of his unemployment benefits.

The act also makes two changes in the definition of "willful misconduct" regarding absences from work under the unemployment compensation law. By law, termination from work for any statutory form of willful misconduct disqualifies an employee from unemployment compensation eligibility. Under prior law, if an employee had three absences in an 18-month period without either good cause or notice to the employer, which an employee could reasonably give

under the circumstances, it constituted willful misconduct. The act changes this to three absences in a 12-month period and makes an absence of one day or two consecutive days without good cause or employer notification a separate instance of misconduct.

The act authorizes workers' compensation (WC) lump sum settlements to be prorated over an insured employee's life expectancy if the parties agree and the WC commissioner approves. Prior law permitted lump sum settlements but did not address prorating. In recent years, the Workers' Compensation Commission began the practice of prorating lump sum settlements.

EFFECTIVE DATE: October 1, 2004, except the workers' compensation provision is effective upon passage.

BACKGROUND*Federal Law*

The Federal Unemployment Tax Act (FUTA) requires states to reduce a claimant's weekly unemployment compensation if he collects a pension from a base-period employer. Pensions from an employer or employers who are not part of the unemployment compensation work base period are not subject to any such reduction. (Unemployment compensation benefits are charged to the employer or employers an employee had during his work base period, the time period of employment the benefits are based on.)

But FUTA allows states to limit or eliminate the amount of such reductions for Social Security benefits by taking into account contributions the employee made to his pension (26 USC § 3304(a) (15) (B)). States may reduce the amount deducted from unemployment compensation by up to 100% (i.e., eliminate the reduction), as long as state law specifies that the offset reduction is due to the individual's contributions to the Social Security pension plan.

Social Security Disability Offsets

Under federal law, Social Security disability (SSD) benefits are reduced if a recipient's benefits from other sources, including WC, reach a certain threshold. Prorating a lump sum settlement can reduce or eliminate a potential reduction if the injured employee is currently, or may in the future be, eligible for SSD benefits. Federal regulations allow such prorating as a means to minimize or reduce a SSD recipient's offset.

PA 04-144—sHB 5045

Planning and Development Committee

Environment Committee

Appropriations Committee

Finance, Revenue and Bonding Committee

General Law Committee

AN ACT CONCERNING FLOODPLAIN MANAGEMENT AND HAZARD MITIGATION

SUMMARY: This act establishes policies for reducing flooding and other potential natural hazards. It requires the state to address these goals when it revises its five-year conservation and development plan after March 1, 2006. It requires towns to adopt regulatory standards for managing floodplains and reducing other potential hazards. The act requires the Department of Environmental Protection (DEP) commissioner to develop and publically disseminate guidelines, which must include a model ordinance towns can use when revising their land use regulations and ordinances.

The act provides funding to implement local floodplain management and natural hazard mitigation projects. It specifically allows towns to use Local Capital Improvement Program funds for these purposes. Existing law allows them to use these funds for constructing, renovating, enlarging, or repairing flood control projects. Beginning October 1, 2005, the act requires the DEP commissioner to provide grants for local and regional projects and plans to minimize flooding and other natural hazards.

The act funds the grants by increasing the existing state fee on local land use applications and dedicating about a third of the revenue generated to the grants. By law, towns collect and remit most of the fee revenue to the state and keep a portion to cover the administrative cost of doing so. The act increases the towns' portion of the revenue. It also increases the total annual amount by which the state can reduce a town's Mashantucket Pequot and Mohegan Fund payments if it fails to remit the fee revenue.

Lastly, the act specifically requires residential property condition reports to disclose information about flood hazards. Existing law requires these reports to include information about lead, radon, subsurface sewage disposal, and other environmental information the consumer protection commissioner believes would interest buyers. By law, people offering residential real estate for sale, exchange, or lease must give prospective buyers the report before completing the transaction.

EFFECTIVE DATE: October 1, 2004, except for the provisions increasing the fee, establishing the grant program, and authorizing regulations, which take effect July 1, 2004.

LAND USE REGULATIONS AND POLICIES

State Plan of Conservation and Development

The act requires the Office of Policy and Management (OPM) secretary to (1) consider ways to reduce flooding and other natural hazards, (2) identify how natural hazards could affect infrastructure and property, and (3) recommend how the state can minimize siting future infrastructure and development projects in areas prone to natural hazards. He must do this each time he revises the five-year State Plan of Conservation and Development after March 1, 2006.

The law requires state-funded development projects to be consistent with the plan. It also requires towns to consider the plan each time they revise their local plans of conservation and development.

Land Use Regulations

Under federal law, towns must adopt or revise floodplain regulations when the federal insurance administrator notifies them under the National Flood Insurance Program that they contain areas susceptible to flooding, mudslides, or other flood-related erosion hazards. Federal agencies will not fund any development project in flood-prone areas until towns revise the regulations to meet federal standards. A floodplain is an area within the real or theoretical limits of the base flood or base flood for a critical activity, as determined by the town or the Federal Emergency Management Agency in its flood insurance study or flood insurance rate map for the town.

The act sets minimum standards towns must meet when they adopt or revise floodplain regulations and ordinances. The regulations must restrict encroachments in a designated floodplain that is not tidally influenced. They must prohibit encroachments that increase a structure's ground floor area (i. e., the footprint) unless a licensed professional engineer certifies that it will not increase the base flood elevation. This restriction applies to any encroachment resulting from fill, new construction, or substantial improvements exceeding 50% of a structure's market value before the improvement.

The regulations may allow a project to reduce a floodplain's waterholding capacity if the reduction:

1. is compensated for by deepening or widening the floodplain;
2. is on site;
3. is within the same hydraulic reach and a volume not previously used for flood storage;
4. is hydraulically comparable and incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-

year flood elevation, which would be displaced by the proposed project; and

5. has an unrestricted hydraulic connection to the same waterway or water body.

The act sets narrow conditions under which work compensating for a reduction can be performed off-site on land adjacent to the floodplain. The party proposing to do the work must obtain the town's approval and easements from the adjacent land's owners.

Lastly, the regulations must keep any work on flood-prone land adjacent to a floodplain from increasing the flow of water or the flood stage. This restriction includes work intended to compensate for a reduction in the floodplain's water holding capacity.

HAZARD MITIGATION AND FLOODPLAIN MANAGEMENT PROGRAM

Funding Mechanism

The act funds this program by increasing, from \$20 to \$30, the state-imposed land use application fee, which funds state environmental review teams and the Council on Soil and Water Conservation and its districts. Existing law requires towns to impose the fee on any application for local approval the zoning, planning, inland wetlands, and coastal area management statutes explicitly require. These statutes require towns to adopt regulations and ordinances under which they can also require applications for other approvals. The act extends the fee to these applications as well as those required under the statutes.

The act creates a nonlapsing hazard mitigation and floodplain management account in the Environmental Quality Fund and requires \$9 of the revenue from the fee to go into the account. The act also increases, from \$1 to \$2 per application, the amount towns keep to collect and remit the fee. By law, the remaining \$19 goes to DEP, the Council on Soil and Water Conservation, and soil and water conservation districts.

The act increases, from \$2,000 to \$4,000, the total annual amount by which the OPM secretary can reduce a town's Mashantucket Pequot and Mohegan Fund payments for failing to remit the fee revenue. The state uses the fund to (1) make payments in lieu of property taxes for property owned by the state, private higher education institutions, and nonprofit general hospitals and (2) pay for local property tax relief.

Grants for Reducing or Mitigating Natural Hazards

Under the act, towns and regional planning agencies, councils of elected officials, and councils of governments qualify for grants reimbursing them for projects that reduce or mitigate natural hazards. Eligible projects include those that preserve the capacity

of designated floodplains to store and convey floodwaters or that reduce or eliminate the long-term risks flooding, high winds, and other natural hazards pose to people, infrastructure, and property. Each fiscal year, the DEP commissioner must use at least 60% of the available funds for this purpose. The grants must reimburse the recipients for 90% of a project's costs.

Towns and regional organizations can apply for funds on applications the commissioner provides. An application must describe the activities to be funded, their objectives, and the cost. A town's chief executive officer can submit the application or assign this task to the town planner, public works director, police or fire chief, or emergency management director.

The commissioner must, by February 1, 2005, publish and disseminate a pamphlet describing DEP's process for evaluating applications.

He must begin making grants on or after July 1, 2005. He must disperse the grants twice a year, with the first round occurring by July 31 and the second by December 31. But he must do so only during those years when he must reimburse towns and other eligible entities for project costs.

The commissioner must adopt regulations for making grants. He must also adopt specific regulations establishing relative priorities for awarding the grants. He must base the priorities on local and regional needs, consistency and fairness in dispersing grants, and the extent to which proposed projects advance the act's purposes. He may establish other criteria and, in awarding grants, may consult with anyone he deems necessary. He can require grant recipients to repay a grant if they use it for other purposes or to supplant funds from other sources.

Application Rating Criteria

In awarding grants, the commissioner must give the highest priority to projects that prepare or revise hazard mitigation plans or implement the National Flood Insurance Program's community rating system. He must give secondary priority to projects that:

1. implement an approved plan or
2. administer or provide financial assistance for mitigating hazards and managing floodplain grants.

Reports

Towns and regional organizations getting grants must report annually to the commissioner on how they used them. They must submit these reports by September 1 of the fiscal year following the one in which they received the grant. A town's chief executive officer can have the report prepared by the same

officials he can charge with preparing the grant applications.

The commissioner must annually report on the activities he funded during the previous fiscal year. His report must identify each grant recipient, the grant amount, and how the grants were used. It must also describe the program's operation and effectiveness and recommend necessary changes. The commissioner must submit the report by January 1, starting in 2007. The act does not identify to whom he must submit it.

PA 04-183—sHB 5526

*Planning and Development Committee
Environment Committee*

**AN ACT CONCERNING HARBOR
MANAGEMENT PLANS**

SUMMARY: This act creates a mechanism for recommending standards and criteria for (1) constructing and locating private residential docks and piers and (2) managing scenic resources and visual impacts within the limits of navigable waters in that part of the Connecticut River that flows through Chester, Deep River, East Haddam, Essex, Haddam, Lyme, Old Lyme, and Old Saybrook.

The act requires the environmental protection commissioner to select two harbor management commissions from these towns to jointly recommend standards and criteria to him for his and the transportation commissioner's approval. The commissioners must approve or reject a recommendation within 120 days after receiving it. Any harbor management commission in the eight towns may adopt, in their harbor management plans, any of the recommendations the commissioners approve. Essex, Old Lyme, and Old Saybrook have established commissions.

EFFECTIVE DATE: Upon passage

BACKGROUND

Harbor Management Plans

These plans are prepared by harbor commissions, which any town with navigable waters may establish. Commissions can recommend boundaries for development areas, designations for channels and boat basins, areas for locating houseboats, pump-out facilities, and regulations for operating vessels in the harbors. Commissions must submit the plans to the transportation and environmental protection commissioners for approval, after which local bodies may adopt the plans by ordinance.

Local officials must comply or consider the plan when issuing permits or approving development projects. Harbormasters must comply with the plan when issuing permits for moorings and anchorages. Land use commissions and development agencies must submit applications to the harbor commission upon request for comment. These entities need a two-thirds vote of their members to approve a project if the commission commented unfavorably on it.

PA 04-210—sSB 448

*Planning and Development Committee
Judiciary Committee*

**AN ACT REQUIRING SUBDIVISIONS TO
COMPLY WITH SUBSEQUENTLY ENACTED
ZONING REGULATIONS**

SUMMARY: This act modifies the exemption that have lots shown on an approved residential subdivision plan from subsequent changes in the town's zoning regulations or zoning map. It extends the provision to cover lots on approved resubdivision plans. But it requires that any construction on an improved lot covered by a plan conform to zoning changes adopted after the lot is improved. Under the act, a lot is considered improved once a building permit has been issued and a foundation has been completed under the permit. The requirement also applies if any existing structure on the lot is demolished (i.e., a "teardown"). The act continues to exempt vacant lots (other than teardowns) from changes in the zoning regulations and maps adopted after the subdivision is approved. A lot is considered vacant until a building permit has been issued for it and its foundation completed. The act applies to subdivisions and resubdivisions approved before, on, or after its effective date (May 5, 2004).

The act does not affect the law that exempts a legal nonconforming use or structure from subsequent changes in zoning law. A legal nonconforming use or structure is one that was legal before the change in the law.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Court Case

In *Poirier v. Zoning Board of Appeals of the Town of Wilton*, (75 Conn. App. 289 (2003)), the Appellate Court held that the plain terms of CGS § 8-26a(b) gave lot owners in approved subdivisions a vested right, entitling them to develop their property in accordance with the zoning regulations in place when the subdivision was approved.

PA 04-248—sHB 5522*Planning and Development Committee***AN ACT CONCERNING THE BOARD OF ASSESSMENT APPEALS FOR THE TOWN OF SOMERS, THE TIME FOR FILING CERTAIN EXEMPTIONS IN EAST HARTFORD, ZONING NEAR CERTAIN LAKES, VALIDATION OF EXECUTIVE NOMINATIONS AND SUBMISSION OF THE STATE PLAN OF CONSERVATION AND DEVELOPMENT****SUMMARY:** This act:

1. requires the Somers board of assessment appeals to hear appeals of property tax assessments if the town decides to use the 2001 rather than 2002 grand list as the basis for taxation;
2. requires the Office of Policy and Management (OPM) to submit the State Plan of Conservation and Development to the Continuing Legislative Committee on Planning and Development by December 1, 2004, rather than within three months of the end of the hearings on the plan;
3. bars a municipality, starting April 1, 2004, from approving certain projects located near large lakes under its zoning regulations;
4. validates any executive nomination that was confirmed during the regular 2004 session, even if the Senate or House did not act on the nomination within 10 calendar days after the Executive and Legislative Nominations Committee approved it;
5. allows manufacturers in East Hartford to apply for a property tax exemption for their machinery in 2004 even though they missed the application deadline.

EFFECTIVE DATE: Upon passage

SOMERS

Under the act, if the Somers town meeting votes to nullify its revaluation-based grand list of October 1, 2002 and the grand list is revised to reflect the prior level of assessment, the town's board of assessment appeals must meet in August 2004. At this meeting, it must hear appeals related to parcels whose assessment under the revised 2002 grand list increased compared to the October 1, 2001 grand list. Aggrieved taxpayers must file a written request for an appeal by July 1, 2004. The normal provisions for appeals apply, except that the deadline for the board to notify taxpayers of the date and time of the hearing is August 1, 2004.

The act also validates the decision of the board with regard to any hearing it held during its regular session with respect to any parcel whose assessment, based on the revised 2002 assessment, increased over the 2001 grand list.

DEVELOPMENTS NEAR LAKES

The act bars a municipality, under its zoning regulations, from authorizing the construction of structures, accessory structures, and other improvements having a total area of more than 12,000 square feet if the development is within 2,000 feet of a lake (other than a reservoir) larger than 500 acres. This provision is retroactive to April 1, 2004.

EAST HARTFORD

By law, new and newly acquired manufacturing machinery and equipment are exempt from property tax and the state reimburses the affected town for part of the lost tax revenue.

This act allows an eligible manufacturer in East Hartford to apply for the exemption even though it missed the November 1 application deadline in 2003. The manufacturer must apply by June 4, 2004. It also must pay the fee that would have applied if it had sought an extension of the filing deadline. (The law allows manufacturers to request an extension of the deadline to December, upon payment of a fee that ranges from \$50 to \$500, depending on the value of the claimed exemption.)

Once the application and fee are received and the town verifies that the machinery and equipment are eligible for the exemption, the assessor must approve the exemption. If the taxes have already been paid, the town must reimburse the applicant for the amount by which the payment exceeded the amount due if the application had been filed on time. The assessor can submit the approved exemption to the OPM secretary with a request for reimbursement. The reimbursement must be included in the 2005 payments from the state.

PA 04-146—HB 5405

*Program Review and Investigations Committee
Judiciary Committee
Legislative Management Committee
Labor and Public Employees Committee*

**AN ACT IMPLEMENTING THE
RECOMMENDATIONS OF THE LEGISLATIVE
PROGRAM REVIEW AND INVESTIGATIONS
COMMITTEE CONCERNING CORRECTION
OFFICER STAFFING AND ESTABLISHING THE
COMMISSION ON GOVERNMENT
ACCOUNTABILITY, CREATIVITY AND
EFFICIENCY**

SUMMARY: This act establishes a 29-member Commission on Government Accountability, Creativity and Efficiency (ACE) to review the ACE Task Force report, determine which of the areas that the task force identified need further study, and conduct those studies.

It requires the Department of Correction (DOC) commissioner to submit reports of quarterly data to the governor and Judiciary and Labor committees on the number of:

1. filed inmate disciplinary reports,
2. reported inmate assaults on custodial staff,
3. reported inmate assaults on other inmates, and
4. filed workers' compensation claims by custodial staff.

It also requires DOC to study the relationship between workers' compensation claims filed by custodial staff and overtime. The study must include a determination of whether the specific incident giving rise to each claim occurred (1) while the claimant was working overtime or (2) within 72 hours of his working overtime. The act requires DOC to submit its findings to the governor and General Assembly by January 1, 2005.

EFFECTIVE DATE: Upon passage

**COMMISSION ON GOVERNMENT
ACCOUNTABILITY, CREATIVITY AND
EFFICIENCY**

The commission consists of:

1. the chairmen and ranking members of the Appropriations and Program Review and Investigations committees;
2. three members, who may be legislators, appointed by each of the six top legislative leaders; and
3. three gubernatorial appointees.

The deadline for appointing members is June 11, 2004. The commission elects the chairperson.

The commission must conduct its reviews, beginning by June 11, 2004, and submit its findings and recommendations to the governor and the relevant legislative committees by January 5, 2005. The commission terminates when it submits its report.

DOC QUARTERLY DATA REPORTS

The act requires the DOC commissioner to submit the first quarterly data report by October 30, 2004, which is 30 days after the end of the first calendar quarter of the fiscal year ending June 30, 2005. It appears that the next quarterly report is due by October 30, 2005, within 30 days of the end of the first quarter of the next fiscal year. Reports are then due within 30 days of the end of each quarter thereafter.

The act authorizes the Judiciary and Labor committees to hold a public hearing on any report.

If the number of disciplinary reports, assaults, or workers' compensation claims in a calendar quarter increases by more than 5% above the previous quarter or the same quarter in the previous year, the bill requires the commissioner to explain the increase in the report and describe measures to address it.

BACKGROUND

Task Force on Government Accountability, Creativity and Efficiency

On May 7, 2003, the House speaker and House majority leader announced the creation of a bi-partisan, six-member task force and charged it with conducting a review of state government programs and agencies. On December 10, 2003, the commission approved 11 final recommendations that included the creation of a successor commission and 10 areas for further study, dealing with higher education, federal revenue maximization, prescription drug costs, and privatization and performance-based budgeting, among other things.

PA 04-35—HB 5533

Public Health Committee

AN ACT CONCERNING OPTOMETRIST LICENSURE

SUMMARY: Beginning January 1, 2005, this act requires an individual applying for initial licensure as an optometrist to meet the requirements to practice advanced optometric care. It does not apply to optometrists licensed in the state prior to January 1, 2005.

EFFECTIVE DATE: October 1, 2004

BACKGROUND

Advanced Optometric Care

The law recognizes a category of optometric practice known as “advanced optometric care.” It allows optometrists a broader range of activities, including nonsurgical treatment of glaucoma patients. They must meet additional education and testing requirements and be able to use certain drugs for diagnostic and therapeutic purposes in order to practice advanced optometric care. There is no separate Department of Public Health (DPH) license for advanced optometric care.

By law, optometrists cannot practice advanced optometric care unless they have successfully completed at least 75 classroom hours and 51 clinical hours of study in advanced optometric care. This must include treatment of eye deficiencies, deformities, diseases or abnormalities, including anterior segment disease, lacrimology (concerned with secretion and conduction of tears), and glaucoma. The course of study must be conducted by an accredited optometry or medical school. Licensed optometrists seeking to practice advanced optometric care must pass an examination administered by that school. Finally, they must meet the requirements to acquire and use ocular agents-D and to acquire, administer, dispense, and prescribe ocular agents-T.

Ocular Agents

“Ocular agents-D” are topically administered agents used for diagnosing visual defects, abnormal conditions, or diseases of the eye and eyelid. Such agents also include (1) those vision training or optical devices that have been designated drugs for preclearance testing by the Food and Drug Administration or similar agency and (2) fluorescein and similar dyes used in fitting contact lenses.

“Ocular agents-T” are (1) topically administered ophthalmic agents and orally administered antibiotics, antihistamines, and antiviral agents used for treating or alleviating the effects of eye disease or abnormal conditions of the eye or eyelid, excluding the lacrimal drainage system and glands (tears) and structures behind the iris, but including the treatment of iritis, and (2) orally administered analgesic agents for alleviating pain caused by these diseases or conditions.

PA 04-46—sSB 561

Public Health Committee

AN ACT CONCERNING HOSPITAL BILLING PRACTICES

SUMMARY: This act clarifies when a hospital may refer a patient debt to a collection agent or initiate an action against a patient or his estate to collect fees for care provided at the hospital on or after October 1, 2003. The hospital must determine whether the individual is uninsured and not eligible for a hospital bed fund. Prior law required the hospital to determine that the person was uninsured and not eligible for the bed fund.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Uninsured Patient

By law, hospitals providing services to an uninsured patient are prohibited from collecting from the patient more than the cost of providing services. An “uninsured patient,” under the law, is one with income at or below 250% of the federal poverty level who (1) has been denied eligibility for health care coverage under Medicaid or the General Assistance program for failure to satisfy income or other eligibility requirements and (2) was not eligible for hospital service coverage under Medicare or CHAMPUS; Medicaid; any health insurance program of another nation, state, or U.S. territory or commonwealth; or any other government or private health or accident insurance or benefit program.

Hospital Bed Funds

By law, a hospital bed fund refers to gifts of money, stock, other financial instruments, or other property made to establish a fund to provide medical care to patients at a hospital.

PA 04-54—SB 466

*Public Health Committee
Education Committee*

**AN ACT CONCERNING REVISIONS TO THE
DEPARTMENT OF MENTAL RETARDATION
STATUTES**

SUMMARY: This act permits the state to receive federal Medicaid reimbursement for services Department of Mental Retardation (DMR) Birth-to-Three providers render under an individualized family service plan signed by an advanced practice registered nurse (APRN). Previously, Department of Social Services (DSS) regulations required a physician to sign the plan. The act also provides for confidentiality when school systems are notified that a child is aging out of the Birth-to-Three program.

The act (1) requires DMR to hold public hearings and review its five-year plan every five, rather than every two, years; (2) eliminates the seven-member education council that advises the commissioner and the superintendent of DMR's Unified School District # 3; and (3) repeals two obsolete statutes.

EFFECTIVE DATE: Upon passage, except for the elimination of the education council, which is effective October 1, 2004.

BIRTH-TO-THREE PROGRAM

Medicaid Reimbursement

The act permits the state to receive federal Medicaid reimbursement for services authorized by an APRN. It does this by requiring DSS to accept as sufficient to substantiate a claim for Medicaid reimbursement services ordered in an individualized family service plan signed by an APRN (1) working within the scope of his license, (2) in collaboration with a licensed physician, and (3) performing or directly supervising primary care services for children enrolled in the Birth-to-Three program.

*Ensuring Confidentiality When Notifying School
Districts*

The law requires the Birth-to-Three program to include a system for notifying school districts by January 1 about local children receiving services who will turn age three during the next fiscal year. The act requires this system to provide ways to preserve the child's and parent or guardian's confidentiality.

DMR FIVE-YEAR PLAN

Prior law required DMR to submit a revised five-year plan to the Public Health and Appropriations committees every two years following public hearings on a draft plan. The act requires it to revise and submit the plan only every five years, making it a fixed, rather than a rolling, plan. The current plan is effective from 2002 to 2007; the act thus eliminates revisions in 2004 and 2006. Among other things, the plan sets the agency's priorities, goals, objectives, and strategies and identifies changes from those in the previous plan.

EDUCATION COUNCIL

The act eliminates the seven-member education council that advises the DMR commissioner and the superintendent of DMR's Unified School District #3 on various matters. The council was statutorily responsible for planning and maintaining appropriate educational programs, studying educational needs of people with severe mental retardation, recommending a superintendent for the district, and consulting with him. Unified School District #3 currently serves only children under age three.

PA 04-81—HB 5629

Public Health Committee

**AN ACT CONCERNING HOSPICE SERVICES IN
RURAL AREAS**

SUMMARY: This act allows a licensed home health care agency that does not meet certain staffing requirements to provide hospice services in a rural town under a Department of Public Health (DPH) waiver. By law, such services can be provided in a patient's home only by a licensed home health agency with DPH approval.

Under this act, a home health care agency that is unable to access licensed or Medicare-certified hospice care to consistently provide adequate services to its rural town patients can apply for a DPH waiver from state regulations concerning staffing. Such a waiver can authorize one or more of the following: (1) the agency's supervisor of clinical services also to serve as supervisor of clinical services assigned to the hospice program; (2) the hospice volunteer coordinator and the hospice program director to be permanent part-time employees; and (3) the program director to perform other services at the agency, including serving as hospice volunteer coordinator. A "permanent part-time employee," under the act, is one employed and on duty at least 20 hours per work week on a regular basis.

Before granting the waiver, the DPH commissioner must determine that it will not adversely affect the health, safety, and welfare of hospice patients and their families. The waiver is effective for two years and an agency can reapply.

EFFECTIVE DATE: October 1, 2004 (PA 04-258 changes the effective date to upon passage; PA 04-2, May Special Session, makes the same effective date change.)

RURAL TOWN

The act defines a “rural town” as (1) one with either 75% or more of its population classified as rural in the 1990 federal census or in the most recent census used by the State Office of Rural Health to determine rural towns or (2) a town not designated as a metropolitan area on the list kept by the federal Office of Management and Budget and used by the state rural health office.

BACKGROUND

Hospice Regulations

DPH regulations specify that hospice services given in a patient’s home may be provided only by a home health care agency the department licenses, with the approval of the DPH commissioner. The commissioner must approve an agency to provide hospice services if it meets all of the applicable regulatory requirements (DPH Regs. § 19-13-D72(b)(2)). The regulations require that there be a hospice interdisciplinary team that includes (1) the medical director or physician designee; (2) registered nurse; (3) a consulting pharmacist; and (4) one or more of the following, based on the patient’s needs: (a) social worker, (b) bereavement counselor, (c) spiritual counselor, (d) a volunteer coordinator, (e) trained volunteer assigned a role in the patient’s plan of care, and (f) physical therapist, occupational therapist, or speech-language pathologist.

PA 04-82—sHB 5635

Public Health Committee

AN ACT CONCERNING CERTIFIED MEDICAL ASSISTANTS

SUMMARY: This act requires the Department of Public Health (DPH), annually beginning January 1, 2005, to obtain from the American Association of Medical Assistants a list of all state residents on the organization’s registry of certified medical assistants. DPH must make the list available to the public.

Medical assistants are allied health professionals specifically trained to work in ambulatory settings (e.g., physician’s offices, clinics, and group practices). They perform administrative and clinical procedures.

EFFECTIVE DATE: October 1, 2004

PA 04-122—sHB 5407

Public Health Committee

Transportation Committee

AN ACT CONCERNING ORGAN DONATION

SUMMARY: This act amends the law on organ and tissue donation by:

1. requiring the Department of Motor Vehicles (DMV) and the Department of Information Technology (DOIT) to enter into an agreement with a procurement organization to provide the organization access to information on drivers who intend to be organ or tissue donors;
2. expanding the definition of “document of gift” for purposes of making an anatomical gift;
3. requiring health care providers and procurement organizations to act according to the donor’s intentions under certain circumstances;
4. expanding the ways a donor can amend or revoke a gift;
5. changing the ways in which a person can refuse to make an anatomical gift;
6. adding procurement organizations to those who must make a reasonable search for a document of gift or other information about a person’s intentions;
7. allowing certain testing as part of a reasonable examination to determine if an anatomical gift is medically suitable;
8. allowing a procurement organization to access and review a person’s medical record for suitability under certain conditions; and
9. allowing disclosure to a procurement organization of HIV-related information in order to assess donor suitability.

EFFECTIVE DATE: October 1, 2004

DMV-DOIT AGREEMENT WITH PROCUREMENT ORGANIZATION

The act requires the DMV commissioner and chief information officer of DOIT to enter into an agreement with one or more federally designated organ and tissue procurement organizations to provide these organizations with access to names, birthdates, and other relevant information of operator license holders who have registered their intent to be organ donors with

DMV. DMV and DOIT must determine the form and manner of such access after consulting with the procurement organization. This can include electronic transmission of initial information and periodic updates.

The act redefines “procurement organization” as a person licensed, accredited, or approved under federal law, or laws of any state, as a nonprofit organ and tissue procurement organization to procure, distribute, or store human bodies or parts. Previously, a procurement organization had to have some type of state-sanctioned status.

DMV cannot charge a fee for this access, but it can charge the procurement organization reasonable administrative costs. Information provided can only be used to identify license holders as organ and tissue donors.

DMV must include in its regulations a requirement that a description of procurement organizations’ purposes and procedures be included in driver education programs.

DISCLOSURE OF PERSONAL INFORMATION FROM A MOTOR VEHICLE RECORD; DONOR REGISTRY

The act specifically allows DMV to disclose personal information from a motor vehicle record to any individual, organization, or entity using it for inclusion of personal information about people who have consented to become organ and tissue donors in a donor registry established by a procurement organization. It defines a “donor registry” as an electronic database that a procurement organization develops and maintains to identify donors.

The individual, organization, or entity must sign and file with DMV a statement on a DMV-approved form, under penalty for false statement, that the information will be used as stated. DMV can require supporting documentation or information.

MAKING AN ANATOMICAL GIFT

State law allows someone at least 18 years old to (1) make an anatomical gift for any of the purposes allowed by law, (2) limit an anatomical gift to one or more of these purposes, or (3) refuse to make such a gift. By law, an anatomical gift can be made by a “document of gift,” usually signed by the donor, which means a card, a statement attached to or imprinted on a driver’s license, a will, or other writing used to make an anatomical gift. Under the act, a document of gift can also include (1) an organ and tissue donor card, (2) inclusion in an organ donor registry, and (3) an indication on a signed motor vehicle operator’s license application or renewal form.

The act also specifies that, in the absence of a revocation or amendment of any document of gift, state-licensed health care providers and procurement organizations must act according to the donor’s intention and can take appropriate actions to effect the anatomical gift.

Amending or Revoking an Anatomical Gift

The act expands the ways in which a donor can amend or revoke a gift not made by will by additionally allowing (1) any form of communication during a terminal illness or injury addressed to a physician and (2) delivery of a signed statement to a procurement organization. Previously, only a signed statement or delivery of a signed statement to a specified donee who had received a document of gift was allowed.

Refusal to Make a Gift

By law, a person can refuse to make an anatomical gift by (1) a writing signed in the same manner as a document of gift, (2) a statement attached to or imprinted on the donor’s driver’s license, or (3) any other writing used to identify the person as refusing to make a gift. The refusal may be an oral statement or other form of communication during a terminal illness or injury.

This act eliminates the particular option of refusing to make an anatomical gift through the statement or imprint on the license. It also requires that the refusal during the terminal illness or injury be addressed to a physician.

Discussions About an Anatomical Gift

If at or near the time of death, there is no record of a patient making or refusing to make an anatomical gift, the law requires the hospital administrator (or designee) to discuss donor options. The act clarifies that this applies when there is no document of gift or other record indicating a person’s actions.

Reasonable Search for a Document of Gift

The act adds a procurement organization to those who must make a reasonable search for a document of gift or other information identifying whether the individual is a donor or one who has refused. Existing law requires law enforcement officers, firemen, paramedics, or other emergency rescuers to do this. The law also requires hospitals to conduct a search upon admission of someone at or near death if no other source of information is available.

Reasonable Examination

Under the law, an anatomical gift authorizes any reasonable examination to assure the medical acceptability of the gift for its intended purposes. The act provides that this includes serological and compatibility testing. And it allows a procurement organization to assess and review the donor's medical record to assess suitability.

DISCLOSURE OF HIV-RELATED INFORMATION

The law prohibits anyone obtaining confidential HIV-related information from disclosing or being compelled to disclose the information except to certain individuals as prescribed by law. The act allows disclosure to a procurement organization in order to assess donor suitability.

PA 04-164—sSB 566

Public Health Committee

AN ACT CONCERNING THE QUALITY OF HEALTH CARE

SUMMARY: This act revises the law requiring hospitals and outpatient surgical facilities to report adverse events to the Department of Public Health (DPH). Specifically, it:

1. replaces an existing adverse event classification reporting system with a list of reportable events identified by the National Quality Forum (NQF) or DPH;
2. changes the timing for reporting to DPH and requires immediate reports of events DPH defines as emergent;
3. restricts disclosure of adverse events reports; and
4. allows DPH to use practitioners with clinical expertise of the type involved in an adverse event in investigating reports.

It requires the existing Quality of Care Advisory Committee, which advises DPH on quality of care issues, to establish a standing subcommittee on best practices.

The act also allows DPH to designate as a "patient safety organization," a public or private organization whose primary mission involves patient safety improvement activities.

The act requires hospitals and outpatient surgical facilities to seek to work and contract with such organizations as they become available. These organizations must disseminate to health care providers and others, as appropriate, information on best practices. And they must have appropriate safeguards and safety

measures in place to protect the patient safety work product.

Finally, the act allows a hospital to administer influenza and pneumococcal polysaccharide vaccines to patients without a physician's order. It can do this according to a physician-approved hospital policy after assessing the patient for contraindications. The act requires DPH to adopt implementing regulations.

EFFECTIVE DATE: July 1, 2004

ADVERSE EVENT REPORTING*Definition of Adverse Event; National Quality Forum List*

By law, hospitals and outpatient surgical facilities must report adverse events to DPH. An "adverse event" is an injury caused by or associated with medical management that results in death or measurable disability. Under prior law, it included those sentinel events for which remediation plans are required by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO). A "sentinel event" is an unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof. Prior law created four categories of adverse events: Class A, patient death or immediate danger of death; Class B, patient seriously injured or disabled; Class C, patient physical or sexual abuse; and Class D, adverse event not reported under A through C.

The act eliminates the class-based reports and instead requires reports of any event identified on the National Quality Forum's (NQF) List of Serious Reportable Events or on a list compiled by the DPH commissioner and adopted in regulations. The act requires the commissioner to review the list at least annually to determine if any changes are necessary. NQF is a not-for-profit membership organization created to develop and implement a national strategy for health care quality management and reporting.

Adverse Event Reporting

Prior law required hospitals and outpatient surgical facilities to report Class A, B, and C adverse events to DPH as follows: (1) a verbal report within 24 hours of the event, (2) a written report within 72 hours, and (3) a corrective action plan with DPH within seven days. They had to report Class D adverse events quarterly and include corrective action plans.

The act instead requires facilities to (1) submit to DPH a written report and the status of any corrective steps on an adverse event, as identified on the NQF or DPH list, within seven days after the event occurs and (2) a corrective action plan not later than 30 days after

the event. They must make emergent reports, which DPH must define in regulations, immediately to DPH.

Reporting and Information Disclosure

The act requires DPH to report annually to the Public Health Committee by October 1, instead of March 1, on adverse events reported to it. Under prior law, information collected on adverse events did not have to be disclosed for a six-month period from the date the required report was submitted (72 hours after the event). The act instead specifies that the information never need be disclosed and, as under existing law, is not subject to subpoena, discovery, or introduction into evidence in any judicial or administrative proceeding, except as specifically provided by law.

The act also specifies that it should not be construed as limiting access to or disclosure of investigative files maintained by DPH, including adverse event reports. Existing law provides that information DPH receives through filed reports must not be disclosed publicly in a way that identifies any patient or institution, except in limited circumstances. By law, all records DPH obtains in connection with any investigation must not be disclosed to the public (1) for six months from the date of the petition or other event initiating the investigation or (2) until the investigation is terminated pursuant to a withdrawal or other informal disposition or a hearing is convened, whichever is earlier.

The act allows DPH, if it decides to investigate a reported adverse event, to include review by one or more practitioners with clinical expertise of the type involved in the event.

Quality of Care Advisory Committee—Subcommittee on Best Practices

This 24-member committee, established by PA 02-125, advises DPH on quality of care issues. It must meet at least quarterly. Its chairman is the DPH commissioner, or his designee. The Department of Social Services commissioner and Office of Policy and Management secretary are also members. Other members represent health care providers and institutions, professional organizations, the business community, organized labor, health plans, and others involved in quality of care issues.

The act requires the committee to establish a standing subcommittee on best practices. It must advise DPH on effective methods for sharing with providers quality improvement information obtained from DPH's review of reports and corrective action plans, including quality improvement practices, patient safety issues, and preventative strategies. DPH must disseminate

information on such practices, issues, and strategies, at least quarterly, to the subcommittee and hospitals.

PATIENT SAFETY ORGANIZATIONS

Definitions

The act defines a "patient safety organization" as any public or private organization, or part of one, whose primary activity is improving patient safety and quality of health care delivery for patients. The organization must do this by collecting, aggregating, analyzing, or processing medical or health care-related information it receives from health care providers.

The act defines "patient work safety product" as any information, documentation, or communication, including reports, records, memoranda, analyses, statements, root cause analyses, protocols, or policies that (1) a health care provider prepares exclusively for disclosure to a patient safety organization, (2) is created by a patient safety organization, or (3) contains the deliberations or analytical process of a patient safety organization or between an organization and health care providers participating in evaluating patient care.

A "healthcare provider" is any person, corporation, limited liability company, facility, or institution operated, owned, or licensed by the state to provide healthcare or professional services, or an officer, employee, or agent of any of these acting in the course of his employment.

DPH Designation as Patient Safety Organization

The act allows any public or private organization, or part of it, to apply to DPH for designation as a patient safety organization. It authorizes DPH to designate as a patient safety organization an applicant that (1) has a mission statement indicating that its primary purpose concerns patient safety improvement activities, (2) has qualified staff capable of reviewing and producing patient work safety product, (3) is not part of a health insurer or other entity providing health insurance to groups or individuals, and (4) certifies that its mission does not create a conflict of interest with the health care providers who will submit patient safety work product to it.

The act requires each hospital or outpatient surgical facility to try to work with one or more patient safety organizations as they become available. DPH must help these facilities develop such working relationships.

Contracts with Patient Safety Organizations

The act requires a health care provider to enter into written contracts with each patient safety organization to which it sends patient safety work products. Each

contract must require the provider to keep a log that itemizes the types of documents it submits to the organizations without indicating their content. The log cannot be disclosed to or used by any person or entity other than (1) the patient safety organization and the provider with which it has contracted and (2) DPH, solely to allow it to verify the type of information submitted to the organizations. DPH does not have access to patient safety work product under the act.

Best Practices

The act requires a patient safety organization, as appropriate, to give to providers, DPH, the Quality of Care Advisory Committee, and the public information or recommendations on best medical practices or potential system changes designed to improve patient safety and overall quality of care. This can include suggested policies, procedures, or protocols.

Security Measures and Safeguards; Disclosure of Information

The act requires a patient safety organization to have appropriate safeguards and safety measures to ensure the technical integrity and physical safety of any patient safety work product. Such work product must be confidential and not subject to any discovery, access, or use by any person or entity other than the patient safety organization and the provider or institution with which the organization contracts. Patient safety work product submitted to a public or government organization is not public information and thus is not subject to the Freedom of Information Act.

The act specifies that it does not prohibit a patient safety organization from choosing to disclose patient safety work product, in conformity with its mission and within contractual obligations, to the provider submitting the information. The act prohibits an organization from releasing protected health information or patient identifying information unless requirements of state law and the federal Health Insurance Portability and Accountability Act are met.

Finally, the act specifies that a provider's disclosure of patient safety work product to a patient safety organization does not modify, limit, or waive any existing privilege or confidentiality protection.

BACKGROUND

NQF's List of Reportable Events in Healthcare

In March 2002, NQF released a report, *Serious Reportable Events in Healthcare: A National Quality Forum Consensus Report*, designed to form the basis for a national, state-based adverse events reporting system.

The report identifies 27 adverse events in six major categories: (1) surgical, (2) product or device, (3) patient protection, (4) care management, (5) environmental, and (6) criminal.

Table 1 shows the list of serious reportable events.

Table 1: NQF's List of Serious Reportable Events

<i>Event</i>	<i>Additional Specifications</i>
1. SURGICAL	
Surgery performed on the wrong body part	Defined as any surgery performed on a body part that is not consistent with the documented informed consent for that patient Excludes emergent situations that arise in the course of surgery and/or whose exigency precludes obtaining informed consent Surgery includes endoscopies and other invasive procedures
Surgery performed on the wrong patient	Defined as any surgery on a patient that is not consistent with the documented informed consent for that patient Surgery includes endoscopies and other invasive procedures
Wrong surgical procedure performed on a patient	Defined as any procedure performed on a patient that is not consistent with the documented informed consent for that patient Excludes emergent situations that arise in the course of surgery, and/or whose exigency precludes obtaining informed consent Surgery includes endoscopies and other invasive procedures
Retention of a foreign object in a patient after surgery or other procedure	Excludes objects intentionally implanted as part of a planned intervention and objects present prior to surgery that were intentionally retained
Intraoperative or immediately post-operative death in an American Society of Anesthesiologists (ASA) Class I patient	Includes all ASA Class I patient deaths in situations where anesthesia was administered; the planned surgical procedure may or may not have been carried

	out “Immediately post-operative” means within 24 hours after induction of anesthesia (if surgery not completed), surgery, or other invasive procedure was completed
2. PRODUCT OR DEVICE EVENTS	
Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the healthcare facility	Includes generally detectable contaminants in drugs, devices, or biologics regardless of the source of contamination and/or product
Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended	Includes, but is not limited to, catheters, drains, and other specialized tubes, infusion pumps, and ventilators
Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a healthcare facility	Excludes deaths associated with neurosurgical procedures known to present a high risk of intravascular air embolism
3. PATIENT PROTECTION	
Infant discharged to the wrong person	
Patient death or serious disability associated with patient elopement (disappearance) for more than four hours	Excludes events involving competent adults
Patient suicide, or attempted suicide resulting in serious disability, while being cared for in a healthcare facility	Defined as events that result from patient actions after admission to a healthcare facility Excludes deaths resulting from self-inflicted injuries that were the reason for admission to the healthcare facility
4. CASE MANAGEMENT	
Patient death or serious disability associated with a medication error	Excludes reasonable differences in clinical judgment on drug selection and dose
Patient death or serious disability associated with a hemolytic reaction due to the administration of incompatible blood or blood products	

Maternal death or serious disability with labor or delivery in a low-risk pregnancy while being cared for in a healthcare facility	Includes events that occur within 42 days after delivery Excludes deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or cardiomyopathy
Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in a healthcare facility	
Death or serious disability (kernicterus) associated with failure to identify and treat hyperbilirubinemia in neonates	Hyperbilirubinemia is defined as a bilirubin levels >30mg/dl. “Neonates” refers to the first 28 days of life
Stage 3 or 4 pressure ulcers acquired after admission to a healthcare facility	Excludes progression from Stage 2 to Stage 3 if Stage 2 was recognized upon admission
Patient death or serious disability due to spinal manipulative therapy	
5. ENVIRONMENTAL	
Patient death or serious disability associated with an electric shock while being cared for in a healthcare facility	Excludes events involving planned treatments such as electric countershock
Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances	
Patient death or serious disability associated with a burn incurred from any source while being cared for in a healthcare facility	
Patient death associated with a fall while being cared for in a healthcare facility	
Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a healthcare facility	
6. CRIMINAL	
Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed healthcare provider	
Abduction of a patient of any age	

Sexual assault on a patient within or on the grounds of a healthcare facility	
Death or significant injury of a patient or staff member resulting from a physical assault that occurs within or on the grounds of a healthcare facility	

PA 04-165—sSB 567*Public Health Committee**Judiciary Committee*

AN ACT CONCERNING INFORMATION PROVIDED TO THE VICTIM BY THE COURT WHEN AN ACCUSED IS TESTED FOR HUMAN IMMUNODEFICIENCY VIRUS OR ACQUIRED IMMUNE DEFICIENCY SYNDROME

SUMMARY: The law requires a health care provider to supply a patient, upon request, with complete and current information he has about the patient's diagnosis, treatment, and prognosis. The provider must also notify the patient of any test results he has that indicate a need for further treatment or diagnosis. This act requires the provider also to notify the patient of the results of any test not in his possession that he requests for purposes of diagnosis, treatment, or prognosis.

The act requires the court to give sexual assault victims (1) educational material about HIV and AIDS developed by the Department of Public Health (DPH); (2) information about, and referral to, HIV testing and counseling provided through DPH-funded sites for sexual assault victims; and (3) referrals and information concerning rape crisis centers.

It also requires the court to inform the victim that she can designate a provider she chooses or a DPH-funded HIV testing and counseling site to receive the test results. The designated provider or a professional at the DPH-funded site trained in HIV and AIDS counseling must give the victim the test results.

EFFECTIVE DATE: October 1, 2004

HEALTH CARE PROVIDERS

Under the act, "health care provider" means any person or organization licensed or certified to provide the following health services: medicine and surgery, chiropractic, naturopathy, podiatry, athletic training, physical therapy, occupational therapy, substance abuse counseling, radiography, midwifery, nursing, dentistry, dental hygiene, optometry, optics, respiratory care, pharmacy, psychology, marital and family therapy, clinical social work, professional counseling, veterinary

medicine, massage therapy, electrology, hearing instruments, and speech pathology and audiology.

PA 04-211—sSB 470*Public Health Committee**Judiciary Committee**Government Administration and Elections Committee*

AN ACT CONCERNING THE DEPARTMENT OF MENTAL RETARDATION GUARDIANSHIP ASSESSMENT AND REVIEW PROCESS AND THE DEPARTMENT OF MENTAL RETARDATION OMBUDSMAN

SUMMARY: This act transfers the authority to appoint the director of the Department of Mental Retardation (DMR) Ombudsman Office to the governor from the DMR commissioner. It requires the General Assembly to approve the governor's appointee, sets qualifications for the position, and establishes a candidate selection and appointment process.

The act reduces, from three to two, the minimum number of DMR staff who must assess an individual as part of a probate court hearing to determine whether to appoint a guardian for him. It exempts DMR from having to submit evidence when the guardianship of someone with severe or profound mental retardation is reviewed, except if the court requires it to do so. DMR must still submit evidence when a ward has mild or moderate retardation.

EFFECTIVE DATE: October 1, 2004

DMR OMBUDSMAN

Establishing the Ombudsman Office and Ombudsman Qualifications

The act explicitly establishes the DMR Ombudsman Office in statute, removing the existing requirement that the DMR commissioner establish such an office. The office receives complaints from individuals under the care or supervision of DMR or any agency with which it contracts for services, and recommends solutions to the commissioner. The act requires the ombudsman to be a Connecticut resident over age 21 with expertise and experience in the fields of mental retardation and advocating for the rights of DMR consumers.

Appointment Process

Under the act, authority to appoint the ombudsman transfers from the DMR commissioner to the governor when the current ombudsman leaves office. When this

occurs, the position becomes exempt from classified service.

The act establishes a process for submitting candidates to the governor and a timetable for nomination. It requires the governor to notify the Council on Mental Retardation at least 90 days before the end of an ombudsman's term or immediately when a vacancy occurs. Within 60 days of this notice, the council must submit a list of up to five qualified candidates, ranked in order of preference, to the governor. He must choose a nominee from the list within 60 days of receiving it. If he does not, the council refers its top candidate to the legislature for confirmation.

If a candidate withdraws, the governor must choose another nominee from the council's list. If the legislature is not in session when an individual is chosen, the nominee serves as acting ombudsman with all the powers, duties, privileges, and compensation of the office until it meets and confirms him. The ombudsman serves for a term of four years (not including time in an acting capacity). An ombudsman may be reappointed, but the governor must still consider candidates on the council's list. An ombudsman can remain in office until a successor is confirmed.

GUARDIAN ASSESSMENT AND REVIEW

The act reduces, from three to two, the minimum number of DMR staff who must assess an individual as part of a probate court hearing to determine whether to appoint a guardian for him. By law, the DMR assessors report to the court on the severity of the individual's mental retardation and the specific areas in which he needs a guardian's protection.

Once a guardian is appointed, the law requires the probate court to review the guardianship at least every three years based on written evidence submitted by DMR, the guardian, and the ward's attorney. The act exempts DMR from having to submit evidence when the court reviews the guardianship of someone with severe or profound mental retardation, except if the court requires it to do so. DMR must still submit evidence when a ward has mild or moderate retardation. The law requires DMR to observe or examine the individual in person when it conducts an assessment, and all evidence must be submitted within 45 days of the court's request.

PA 04-221—sSB 569

Public Health Committee

Higher Education and Employment Advancement Committee

Appropriations Committee

AN ACT CONCERNING REVISIONS TO THE PUBLIC HEALTH STATUTES

SUMMARY: This act makes numerous changes in the licensing laws governing health and other professions regulated by the Department of Public Health (DPH).

It establishes a uniform 120-day temporary permit for several DPH-regulated professions. Under prior law, these permits were typically valid from the time a person graduated a training program until the results of the first licensing exam were reported, although some were valid from permit filing or issue date until the exam. The 120-day standard affects physician assistants; physical therapists, graduates of foreign physical therapy schools, and physical therapy assistants; occupational therapists; radiology technicians; most registered nurses (RNs) and licensed practical nurses (LPNs); and massage therapists. But the act reduces, from 120 to 90 days, the period for which a temporary permit is valid for RNs seeking license by endorsement (i.e., without examination, for people licensed in another jurisdiction).

It provides for licensure by endorsement for clinical social workers, paramedics, and emergency medical technicians (EMTs) and modifies existing licensure by endorsement laws for RNs and LPNs, barbers, hairdressers, and athletic trainers.

The act exempts pedicurists from licensure as hairdressers and cosmeticians, if they do not cut nail beds, corns, or calluses or provide medical treatment for feet or ankles.

It allows physician assistants (PAs) to request, sign for, and receive professional samples of drugs that they are authorized by law to prescribe, specifying that they can dispense them only to patients. It also permits certain advance practice registered nurses (APRNs) to request, sign for, and receive drug samples.

The act exempts doctors from carrying required medical malpractice insurance when they work without compensation in free clinics and meet other conditions.

It prohibits child day care centers from barring a child from enrolling because he is diagnosed with asthma or may need to use certain kinds of asthma or diabetes-related medication.

Beginning in the 2005 academic year, the act requires public and private colleges and universities annually to provide (1) information about hepatitis B and the risks college age people face of contracting it and (2) notice of the availability and benefits of vaccination. They must provide the information about

the disease to all matriculated students, but the act does not specify who receives the vaccination notice.

The act also makes minor and technical changes.

EFFECTIVE DATE: Various, see below.

TEMPORARY PERMITS (§§ 1-6, 12)

The act makes temporary permits for recent graduates of occupational programs whose licensure DPH regulates valid for 120 days. For PAs, radiology technicians, and massage therapists, the 120 days begin at graduation; for physical therapists (PT), PT assistants, graduates of foreign PT programs, and occupational therapists, the 120 days begin from the date they apply for the permit. Under prior law, temporary permits were effective from the date an individual applied for a permit or the date it was issued until the results of the next licensing exam were issued. Under the act, temporary permits for occupational therapists and radiology technicians are void if the individual fails the licensing exam before the permit expires. This was already the case for the other affected occupations. (The act also affects temporary permits for nurses, which are summarized below.)

EFFECTIVE DATE: October 1, 2004, except the provisions concerning PT assistants are effective when DPH publishes notice that it is implementing regulations governing them and athletic trainers.

NURSES (§§ 7–10, 28, 29, 34)

Licensure by Endorsement

The act extends licensure by endorsement to (1) RNs and LPNs licensed in the District of Columbia and Puerto Rico (and other U.S. commonwealths). They can obtain a license in this way as long as they are not the subject of a professional disciplinary action or unresolved complaint and those jurisdictions' licensing standards are at least equal to Connecticut's. RNs and LPNs licensed in other states and U.S. territories can already obtain a license by endorsement. The act specifies that RNs or LPNs must be licensed in the other jurisdiction when they apply for a Connecticut license.

From October 1, 2004 to October 1, 2005, the act makes an APRN whose RN license was voided because of failure to renew it eligible for licensure by endorsement. The nurse must submit \$90 and a completed application form. The act specifies that an APRN must maintain an RN license, not just be eligible for one, in order to obtain an APRN license.

Temporary Permits

The act allows DPH to issue 120-day temporary permits to (1) licensure by endorsement applicants from

the District of Columbia and Puerto Rico (and other U.S. commonwealths) and (2) nurses whose Connecticut licenses were voided for failure to renew on time. It could already issue temporary permits to applicants from other states and U.S. territories. A nurse whose Connecticut license has been voided must apparently submit a copy of a current valid license from another jurisdiction and a notarized attestation, as would an out-of-state licensure by endorsement applicant. The act prohibits DPH from issuing a temporary permit to any nurse who is the subject of a professional disciplinary action or unresolved complaint.

The act allows graduates from DPH-approved nursing programs to work as RNs and LPNs for up to 90 days after graduation. Under prior law, they could work until the results of the first licensing exam scheduled after graduation were issued, as long as their employer provided adequate supervision. The act also requires employers to verify that graduate nurses have successfully completed a nursing program. It automatically terminates a nurse's ability to work if he fails the licensing exam.

Death Pronouncements and Certificates

The act permits nurse-midwives to determine and pronounce the death of an infant they deliver in the following circumstances: (1) the death must have been anticipated (under the Public Health Code this means that the attending physician expected it due to illness, infirmity, or disease); (2) the nurse-midwife attests to the pronouncement on the death certificate; and (3) she or a physician signs the death certificate within 24 hours after the death pronouncement.

Prior law required the physician in charge of the patient's care to complete, sign, and return the medical certification portion of the death certificate to the funeral director or embalmer within 24 hours after death. The act allows an APRN or a nurse-midwife to fill out this portion of the death certificate, in the latter's case for an infant she delivered. Under prior law, in the absence of the physician, or with his consent, an associate physician, chief medical officer of the institution in which the death occurred, or the pathologist who performed the autopsy could fill out the medical certificate. The act broadens this by allowing (1) an APRN to make the delegation and (2) an APRN, RN, or PA to make the certification.

The act prohibits any of these health care practitioners, rather than just physicians, from signing and returning the medical certification unless he has personally viewed and examined the body and is satisfied that death has occurred. It specifies that an additional viewing of the body is not required if the practitioner who completed the certification was not the

one who made the death determination. This exception already applied if an RN made the pronouncement.

Under the act, any practitioner listed above, not just physicians, refusing or otherwise failing to complete, sign, and return the medical portion of the death certificate within 24 hours can be reported to DPH by the funeral director or embalmer. DPH can fine the person up to \$250 a day, following notification and investigation.

APRNs and Drug Samples

The act allows APRNs working in noninstitutional settings (e.g. a doctor's office) to request, sign for, and receive drug samples. The law already allows them to dispense such drugs.

EFFECTIVE DATE: October 1, 2004

HAIRDRESSERS AND COSMETICIANS (§§ 14–16, 40)

Licensure by Endorsement

The act requires licensure by endorsement applicants to have passed a licensing exam in the jurisdiction that granted them a license. If the test they took in that jurisdiction was not in English, the act requires them to pass an English proficiency exam DPH prescribes. It allows applicants who trained in a jurisdiction that requires fewer than the 1,500 hours that Connecticut requires to substitute up to 500 hours of licensed work.

The act removes requirements that (1) a licensure by endorsement applicant be currently practicing and competent and (2) the other jurisdiction extend licensure by endorsement to Connecticut hairdressers and cosmeticians.

Other Provisions

The act allows people who are not licensed as hairdressers and cosmeticians to trim, file, and paint healthy toenails for cosmetic purposes only. But no one may cut nail beds, corns, or calluses or provide medical treatment for feet or ankles without the appropriate healthcare provider license.

It specifies that hairdressing and cosmetician schools outside Connecticut must have requirements at least equal to those required by Connecticut schools. It repeals a provision that granted license applicants who trained in out-of-state schools equivalent to Connecticut's credit for that training and for their licensed work.

It removes a requirement that DPH conduct hairdressing and cosmetician licensing exams.

EFFECTIVE DATE: October 1, 2004, except the provision allowing unlicensed people to trim, file, and paint toenails is effective on passage.

BARBERS (§ 13)

License by Endorsement

The act conforms statute to practice by explicitly authorizing DPH to grant a license by endorsement to applicants from the District of Columbia, Puerto Rico, and other U.S. commonwealths. It specifies that applicants must have passed a licensing exam in their home jurisdictions, and if the test was not in English, the act requires them to pass an English proficiency exam DPH prescribes. It allows applicants who trained in jurisdictions that require fewer than the 1,500 hours of training that Connecticut requires to substitute up to 500 hours of licensed work. And it removes a requirement that applicants currently be competent, practicing barbers.

Other Provisions

The act removes requirements that (1) DPH hold at least four licensing exams a year, (2) license applicants be free of communicable disease, and (3) barber training cover both theory and practice. It specifies that applicants must pass a written exam; prior law did not specify the form of the test. The act also eliminates some obsolete language specifying barber skills.

EFFECTIVE DATE: October 1, 2004

CLINICAL SOCIAL WORKERS (§ 19)

The act provides for licensure by endorsement for clinical social workers. Applicants must present evidence to DPH that they (1) are licensed or certified in another state or jurisdiction (including other nations) with requirements similar to, or higher than, Connecticut's and (2) have successfully completed the Association of Social Work Board's clinical level exam. A license-by-endorsement applicant may not be the subject of a pending disciplinary action or unresolved complaint.

EFFECTIVE DATE: October 1, 2004

PHYSICIAN ASSISTANTS (§ 21)

The act permits PAs to request, sign for, and receive professional samples of drugs the law authorizes them to prescribe. They can do this when delegated by a physician; in a licensed, nonprofit outpatient clinic; or in a state- or town-operated clinic. The law already allowed them to dispense samples when delegated by a

doctor; the act specifies that they can dispense them only to patients.

The law allows PAs to prescribe various categories of drugs, depending on the situation. They can prescribe schedules IV and V controlled substances (the lowest categories) in any setting when authorized by a supervising doctor. They can prescribe schedules II and III drugs (schedule II is the highest level normally available for prescription) only in hospitals; emergency rooms; and nursing homes, under certain conditions.

EFFECTIVE DATE: October 1, 2004

MASSAGE THERAPISTS (§§ 25 & 35)

Prior law exempted massage therapists continuously licensed since October 1, 1993 from continuing education requirements. Under the act, gaining exemption requires continuous licensure only from February 1, 1994.

The act allows DPH to license as a massage therapist an applicant who (1) on or before July 1, 2005, was enrolled in a massage therapy school that was approved or accredited by a state board of postsecondary technical trade and business schools or a state agency recognized as such; (2) graduated from a massage therapy school that required at least 500 hours of classroom instruction with the instructor present and was accredited or approved by the above board or agency when the applicant graduated; and (3) passed, according to a DPH-prescribed standard, the National Certification Examination for Therapeutic Massage and Bodywork.

EFFECTIVE DATE: October 1, 2004, except the continuing education change is effective upon passage.

ACUPUNCTURISTS (§ 26)

The act provides an alternative path to licensure as an acupuncturist, which is available from the act's passage until September 1, 2005. Table 1 compares this alternate path to the standard licensure requirements.

Table 1: Acupuncturist License Requirements

<i>Standard Requirements</i>	<i>Alternative Path</i>
60 hours postsecondary education in accredited school in U.S. or territory or legally chartered school in another country	Earned, or successfully completed requirements for, MA in acupuncture from an accredited higher education institution in a program including 1,350 hours, of which 500 are clinical
Successful completion of accredited acupuncture course including 1,350 hours, of which 500 are clinical	
Passed DPH-prescribed exam	Passed all portions of the National Certification

	Commission for Acupuncture and Oriental Medicine acupuncture exam, including acupuncture and clean needle portions of the written exam in acupuncture and the practical exam of point location skills
Successfully completed DPH-prescribed course in clean needle technique	Successfully completed clean needle technique course offered by Council of Colleges of Acupuncture and Oriental Medicine

EFFECTIVE DATE: Upon passage

PSYCHOLOGISTS (§ 11)

The act exempts from licensing as a psychologist a graduate of a Board of Psychology Examiners-approved doctoral program who is fulfilling the one year of post-doctoral experience required by law for licensure.

EFFECTIVE DATE: October 1, 2004

NURSING HOME ADMINISTRATORS AND LICENSEES (§§ 18 & 33)

Nursing home administrators must complete 40 hours of continuing education every two years. The act changes the date when this requirement takes effect from the first license renewal after October 1, 2004 to the first renewal after January 1, 2004.

The act requires, rather than permits, the DPH commissioner to refuse to issue or renew a nursing home license to an applicant who fails to submit the information required by law. This information includes the name and address of the home's owners and officers; the criminal histories, if any, of the top administrators; financial information; and affiliations. If the commissioner refuses to grant a license to the applicant under these circumstances, the act requires him to grant it to the holder of the home's certificate of need, if he meets all licensure requirements. If he does not, the commissioner must place the home in receivership. The act specifies that it governs a license renewal application under consideration because of a DPH order.

EFFECTIVE DATE: Upon passage

EMERGENCY MEDICAL SYSTEM (EMS) AND PERSONNEL (§§ 37-39)

The act provides for an alternative path for paramedic licensure by endorsement and emergency medical technician (EMT) certification. It permits such licensure and certification for an applicant who (1) is

currently licensed or certified as a paramedic or EMT in any New England state, New York, or New Jersey; (2) has completed an initial training program consistent with the National Highway Traffic Safety Administration's paramedic curriculum; and (3) faces no pending disciplinary action or unresolved complaints. The law already allows licensure by endorsement for paramedics currently licensed in another jurisdiction whose licensure requirements are at least equal to Connecticut's and who face no pending disciplinary action or unresolved complaints.

The act permits DPH, within available appropriations, to expand its EMS data collection system to cover clinical treatment and patient outcome data. The system currently follows a patient from initial entry into the EMS system through arrival in the emergency room. Data in the system is submitted by ambulance services. A service that fails to submit required data for six consecutive months can lose its primary service area assignment, after notice and a hearing.

EFFECTIVE DATE: Upon passage, except the EMS data base expansion provision is effective October 1, 2004.

ATHLETIC TRAINERS (§§ 22 & 23)

The act requires athletic trainer license applicants to be certified by the National Athletic Trainers' Association (NATA) Board of Certification, Inc. or its successor organization. It substitutes this requirement for the previous one that specified the coursework and duration of training an applicant must have successfully completed and the bodies that could accredit such coursework. It requires them to maintain NATA certification once licensed.

For the year after it takes effect (which occurs after DPH publishes notice that it is implementing regulations governing athletic trainers), the act requires DPH to license as an athletic trainer anyone who presents satisfactory evidence of (1) working continuously as a trainer since October 1, 1979 or (2) certification by the NATA Board of Certification, Inc. Prior law allowed DPH to license people under these conditions if they presented evidence before January 1, 2001.

EFFECTIVE DATE: When DPH publishes notice that it is implementing regulations governing PT assistants and athletic trainers or October 1, 2004, whichever is later.

CHILD DAY CARE CENTERS (§ 24, 32)

The act requires DPH to adopt regulations prohibiting day care centers and group day care homes from denying services to a child because (1) he uses

injectable equipment to administer glucagon (a hormone used to treat low blood sugar in diabetics) or (2) after January 1, 2005, he is diagnosed with asthma or has a prescription for an inhalant medication to treat asthma. The regulations must specify that centers and homes, within three weeks of enrolling a child with an inhalant prescription or glucagon injection equipment, have staff trained to administer the medication on-site whenever the child is there. The act also adds the National Safety Council, American Safety and Health Institute, and Medic First Alert International, Inc. to the list of organizations that can certify day care employees in cardiopulmonary resuscitation (CPR).

EFFECTIVE DATE: Upon passage for the additional CPR-certification agencies; October 1, 2004 for the regulation concerning children with asthma and diabetes.

NONPROFIT ORGANIZATION EMPLOYEES' IMMUNITY (§ 27)

The law immunizes from civil liability volunteers and certain nonprofit organizations when, under specified conditions, a volunteer uses an automatic prefilled cartridge injector on a child who apparently needs an injection due to an allergic reaction. The act extends this immunity to an organization's employees under the same conditions.

EFFECTIVE DATE: October 1, 2004

MEDICAL MALPRACTICE INSURANCE EXEMPTION FOR CERTAIN PHYSICIANS (§ 30)

The law requires physicians to carry medical malpractice insurance of \$500,000 per person, per occurrence with an aggregate of \$1.5 million. The act exempts from this requirement physicians when, for no compensation, they are providing primary health care services at a DPH-licensed, tax-exempt clinic that (1) does not charge for its services, (2) maintains the \$500,000/\$1.5 million malpractice coverage required by law for each 40 hours (or fractional amount) of service these physicians provide, (3) carries additional malpractice coverage in these amounts on behalf of itself and its employees, and (4) maintains total malpractice coverage for \$1.5 million per occurrence and \$3 million in total. A physician covered by the act's exemption must still maintain legally required malpractice coverage when providing services in any other situation. The act states that it does not relieve such clinics from any other insurance the law requires them to maintain.

Under the act, a doctor who permanently retires from practice having maintained the malpractice coverage required by law and then provides free services at a tax-exempt clinic does not lose the right to

unlimited additional extended reporting period coverage (that is, coverage for a claim made after the year in which the action underlying the claim occurred).

EFFECTIVE DATE: Upon passage

VAN DONATION FOR NEEDLE EXCHANGE PROGRAMS (§ 31)

The act requires the Department of Administrative Services (DAS) commissioner to donate up to five vans to towns or organizations that operate needle exchange programs, without following the law governing the distribution of surplus state property. It relieves DAS of any liability for the vans' performance or maintenance once the donation is made and makes the town or organization that accepts the donation solely liable for any damage to or any damage or injury resulting from a van's use. The town or organization must indemnify the state for all claims arising from the vans' use.

EFFECTIVE DATE: Upon passage

SCHOOL HEALTH ASSESSMENTS (§ 36)

The act requires the physicians, APRNs, RNs, and PAs who perform the health assessments required before school enrollment and in middle school and high school to completely fill out assessment forms in addition to signing them.

EFFECTIVE DATE: July 1, 2004

YOUTH CAMPS (§ 17)

The act redefines residential and day camps to mean those that house children under age 16. But under the law, these camps are considered "youth camps," which continue to include 16- and 17-year olds.

EFFECTIVE DATE: Upon passage

BACKGROUND

Hepatitis B

Hepatitis B is a liver infection caused by viruses. It is spread by contact with infected blood or other body fluids of infected people, for example by having sex or sharing needles with an infected person. Two hepatitis B vaccines are approved for use in the United States. Each is usually given in three doses over a 6-month period. A 2-dose regimen (the second dose is given 4-6 months after the first) for one of the vaccines has been approved for use in 11-15 year olds.

PA 04-242—sSB 469

Public Health Committee

Labor and Public Employees Committee

AN ACT CONCERNING MANDATORY LIMITS ON OVERTIME IN HOSPITALS

SUMMARY: This act prohibits registered and licensed practical nurses and nurse's aides from being required to work additional hours in hospitals beyond what is scheduled, except under certain conditions. Under the act, hospitals cannot require such employees to work beyond a predetermined work shift schedule, if that schedule was set at least 48 hours before the start of the work shift. An individual can volunteer or agree to work additional hours, but refusal to do so cannot be grounds for dismissal, discrimination, discharge, or any other penalty or adverse employment decision.

Under the act, the prohibition on additional work hours does not apply to (1) a nurse participating in surgery until the surgery is completed; (2) a nurse working in a critical care unit until another employee beginning a scheduled work shift relieves him; (3) a public health emergency; (4) an institutional emergency, such as adverse weather, catastrophe, or widespread illness, that the hospital administrator believes will significantly reduce the number of nurses available for a scheduled work shift and where he makes a good faith effort to mitigate the impact of this emergency situation on the availability of such employees; and (5) a nurse covered by a collective bargaining agreement that addresses the issue of mandatory overtime.

EFFECTIVE DATE: October 1, 2005

PA 04-249—HB 5531

Public Health Committee

AN ACT CONCERNING REGULATION OF OUTPATIENT SURGICAL FACILITIES

SUMMARY: This act revises the law on outpatient surgical facilities by:

1. amending the definition of "outpatient surgical facility" to eliminate the term "free standing," include facilities performing diagnostic procedures under certain conditions, and exclude certain medical offices owned and operated exclusively by physicians;
2. requiring licensure of outpatient surgical facilities by the Department of Public Health (DPH) except for certain facilities that do not have to be licensed until a later date;
3. requiring outpatient surgical facilities to obtain, except in certain cases, a certificate of need

(CON) from the Office of Health Care Access (OHCA);

4. requiring OHCA to study the feasibility of an expedited CON process for certain outpatient surgical facilities; and
5. establishing a task force to study outpatient surgical facility-related issues.

The act also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2004, except for the task force provision, which takes effect upon passage.

DEFINITION OF OUTPATIENT SURGICAL FACILITY

By law, an “outpatient surgical facility” is one (1) established, operated, or maintained by an entity, individual, firm, partnership, corporation, limited liability company, or association, other than a hospital (hospital-based outpatient surgical facilities are already subject to DPH and OHCA requirements) and (2) providing surgical services that include the use of moderate or deep sedation or analgesia or general anesthesia, as these levels are defined by the American Society of Anesthesiologists or other entity recognized by DPH.

The act adds to this definition facilities providing diagnostic procedures that use moderate or deep sedation, analgesia, or general anesthesia. And, for purposes of DPH licensure, it removes the requirement that they be “free standing.”

The act specifies that an outpatient surgical facility does not include a medical office owned and operated exclusively by a licensed physician or physicians if it (1) has no operating room or designated surgical area, (2) does not bill facility fees to third party payers, (3) does not administer deep sedation or general anesthesia, (4) performs only minor surgical procedures incidental to the work performed in the office of the physician that owns and operates it, and (5) uses only light or moderate sedation or analgesia in connection with this minor surgery. The act states that it should not be construed to affect compliance with the law requiring accreditation for physicians’ offices where various levels of anesthesia and sedation are administered.

OUTPATIENT SURGICAL FACILITIES LICENSURE

Previously, an outpatient surgical facility had to obtain a DPH license unless the entity operating it (1) provided evidence to OHCA that it was operating on or before July 1, 2003; (2) obtained a determination from OHCA, by July 1, 2003, that a CON was not required and provided OHCA with satisfactory evidence that it began developing the facility before that date; or (3)

between July 1, 2003 and June 30, 2004, obtained a CON, based on OHCA’s policies and procedures in effect as of July 1, 2003. If an outpatient facility met any of these exceptions, the law allowed it to operate without a license until March 30, 2007, by which time it had to obtain one. The law prohibited establishing such a facility between July 1, 2003 and July 1, 2004 unless one of these exceptions was met.

The act restricts these exceptions to those facilities that can show (1) they were operating before July 1, 2003 and (2) received an OHCA determination by that date that a CON was not required. It eliminates the exemption, above, for an entity that provided OHCA with satisfactory evidence that it began developing the facility before July 1, 2003 and associated criteria OHCA had to consider in determining whether this was true. It instead specifies that any entity otherwise in compliance with the law can operate without a license until March 30, 2007, but must obtain a license to continue operating after that date.

CERTIFICATE OF NEED

The act requires an outpatient surgical facility to obtain a CON from OHCA, except in certain circumstances. CON is a regulatory process, administered by OHCA, for reviewing certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, or decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is needed. The act specifically exempts outpatient surgical facilities from various OHCA statutes that principally affect hospitals.

The act specifies that an outpatient surgical facility asking to transfer or change ownership or control does not need a CON if OHCA determines that the following are met: (1) before the transfer or change of ownership or control, the facility was owned and controlled exclusively by physicians either directly or through a limited liability company (LLC), a corporation, or a limited liability partnership (LLP) exclusively owned by physicians, or was under the interim control of an estate executor or conservator pending transfer of an ownership interest or control to a physician and (2) after the transfer or ownership or control changes, physicians or physician-owned LLCs, corporations, or LLPs own and control at least a 60% interest in the facility.

EXPEDITED CON—OHCA STUDY

The act requires OHCA to study the feasibility of and make recommendations for an expedited CON process for certain outpatient surgical facilities. It

directs OHCA to consider as possible criteria for eligibility for the expedited process that a facility: (1) be required to get a CON solely because of its establishment, (2) have only one operating room, (3) perform surgeries in only one medical specialty, (4) accept no facility fee for its services, (5) demonstrate in a business plan that it will be a low-volume facility with a nominal adverse economic effect on other nearby providers of similar services, and (6) provide services to Medicaid and General Assistance patients.

The act specifies that OHCA can recommend applying the expedited process to any CON application and decision required by law.

The OHCA commissioner must report to the Public Health Committee by January 1, 2005.

TASK FORCE

The act creates an eight-member task force to study outpatient surgical facility-related issues. It must address (1) whether licensure and CON requirements should apply to oral maxillofacial surgery; (2) licensure requirements for procedures not requiring moderate or deep sedation, analgesia, or general anesthesia and other procedures in settings other than hospitals or outpatient surgical facilities; and (3) transfer agreements and appropriate compensation between outpatient surgical facilities and hospitals.

Task force members include (1) the OHCA and DPH commissioners or their designees and (2) the co-chairmen, vice-chairmen, and ranking members of the Public Health Committee or their designees.

By January 1, 2005, the task force must report to the governor, House speaker, Senate president pro tempore, the House and Senate majority and minority leaders, and the Public Health Committee.

PA 04-255—sHB 5628

Public Health Committee

Planning and Development Committee

Judiciary Committee

AN ACT CONCERNING FUNERAL DIRECTORS AND VITAL RECORDS

SUMMARY: This act authorizes advanced practiced registered nurses (APRNs) to make death determinations and pronouncements under certain conditions. It also expands the list of those licensed health care practitioners who can certify a death to include APRNs, physician assistants, and registered nurses (RNs) in addition to physicians, chief medical officers of health care institutions in which the death occurred, and pathologists.

The act gives local registrars of vital statistics the authority the Department of Public Health (DPH) commissioner already has to match birth and death certificates and to post the facts of death to the appropriate birth certificate in order to protect the integrity of vital records and prevent their fraudulent use.

The act also:

1. requires registrars of vital statistics to ensure that various certificates are complete before accepting them for filing;
2. amends the law on acknowledgment of paternity and changes to birth certificates;
3. clarifies existing provisions on completion of death certificates addressing time for filing and who may make actual filings;
4. requires funeral directors and embalmers to make certain filings concerning death certificates and requires an affidavit to be filed in the case of a communicable disease;
5. makes changes to cremation records and permit requirements;
6. requires burial transit removal permits in certain situations;
7. imposes penalties on sextons failing to make required reports on a timely basis;
8. allows for the issuance of a disinterment permit to the responsible licensed embalmer or funeral director as indicated on the death certificate or burial permit, or to a person designated on an order by a Superior Court judge;
9. allows unlicensed individuals to transport a body in certain situations; and
10. makes numerous technical and conforming changes.

The act repeals provisions concerning (1) temporary removal of a body to another town or state and (2) fines against registrars for failure to make marriage license applications available for public examination during office hours.

EFFECTIVE DATE: October 1, 2004, except for the provision requiring the birth mother's name on birth and replacement birth certificates, which is effective upon passage.

COMPLETENESS OF VITAL RECORDS; TRANSMITTING TO OTHER TOWNS

The act requires registrars of vital statistics to ensure that all certificates of birth, marriage, death, and fetal death are fully completed before accepting the certificate for filing.

The law requires the registrar in a town where a birth, marriage, death, or fetal death certificate is filed to make a certified copy of it and send it to the registrar of another town when it appears that the child's mother,

either party to the marriage, or the deceased resided in that town. The act eliminates a requirement that a certified copy be sent when it involves an out-of-state location.

FEES

The act subjects the federal government to various fees for birth, marriage, and death-related records.

BIRTH CERTIFICATES

The act requires a birth certificate to be completed in its entirety containing such information that DPH requires.

Name of the Birth Mother

Existing law requires that each birth certificate contain the birth mother's name, except by court order. The act requires that (1) the birth certificate be filed with the birth mother's name recorded and (2) DPH seal it. It directs DPH to create a replacement certificate within 45 days after receiving a court order that includes all information as of the date of birth. DPH must transmit an exact copy of the replacement certificate to the registrar of vital statistics of the town of birth and to any other registrar as DPH finds appropriate, immediately after it has been prepared. When an eligible party requests a certified copy of a birth certificate, the act requires that the replacement certificate be provided.

Acknowledgement of Paternity

The law allows recording information on whether a child was born in or out of wedlock and the mother's marital status on a confidential portion of the birth certificate. The name of the father is entered on the birth certificate after an acknowledgment of paternity is completed at a hospital, or in a town in the case of a home birth, and transmitted to DPH. If another father's information is already recorded on the certificate it cannot be removed unless DPH receives a court order finding that (1) the person recorded on the birth certificate is not the child's father or (2) a person other than the one recorded is the child's father. The act requires that this court order be certified. It also requires DPH to restrict access to, and issuance of, certified copies of acknowledgements of paternity.

Prior law required DPH to include on, or amend, a child's birth certificate to show paternity if it was not already shown or to change the child's name, or both, upon receiving (1) a lawfully executed acknowledgment of paternity by both parents of a child born out of wedlock or (2) a certified order of a court establishing

the paternity of such a child. If another man's name was on the birth certificate, DPH could not remove or replace this information unless it was presented with a court order meeting the requirements cited above.

The act instead directs DPH to change the name of the child if so indicated on the acknowledgement of paternity form or in the certified court order as part of the paternity action. It also prohibits DPH from removing or replacing the father's information on the birth certificate if another father is listed unless (1) presented with a certified court order meeting the requirements cited above or (2) upon proper filing of a rescission.

The act requires DPH to restrict access to and issuance of certified copies of acknowledgements of paternity to (1) parents named on the acknowledgement; (2) the person whose birth is acknowledged, if over 18; (3) an authorized Department of Social Services (DSS) representative; (4) an attorney representing the person or a parent named on the acknowledgment; or (5) agents of a state or federal agency, as approved by DPH. Access is not restricted for the "IV-D agency," which refers to DSS' Bureau of Child Support Enforcement, which is authorized to administer the child support program mandated by Title IV-D of the Social Security Act.

DETERMINATION AND PRONOUNCEMENT OF DEATH

Under the act, an APRN can make a determination and pronouncement of death of a patient if the APRN (1) attests to the pronouncement on the death certificate and (2) signs it within 24 hours of the pronouncement.

By law, RNs in charge of a hospice or nursing home facility, or employed by a licensed home health care agency in a home or residence, can make a determination and pronouncement of death of a patient if certain conditions are met. The act eliminates a requirement that DPH notify all people and facilities affected by regulations it adopts to implement the law on death pronouncement. This includes hospices, nursing homes, physicians, home health care agencies, emergency medical technicians, funeral directors, and medical examiners.

DEATH CERTIFICATES

Filing Periods

The act requires completion of death certificates in their entirety and filing them with the registrar of vital statistics in the town where the death occurred within (1) five days of death, if filing a paper certificate and (2) three days of death, if filing through an electronic death registry system.

Completion of Death Certificate; Affidavit Concerning Communicable Disease

The law requires licensed funeral directors or embalmers, including those from another state who comply with DPH reciprocal agreements, to complete a death certificate when they are in charge of the burial. The act allows their designees to file the certificate.

By law, only a licensed embalmer can take charge of the burial of a person who died from a communicable disease; the embalmer must file the death certificate and a signed and sworn certificate stating that the body has been disinfected according to the Public Health Code. The act requires the embalmer to file an affidavit, on a DPH form, concerning the disinfection when the person who died had a communicable disease. It also eliminates the option in prior law of another embalmer, other than the one filing the death certificate, filing the document about disinfection.

Medical Certification Portion of Death Certificate

Existing law requires the physician in charge of the patient's care to complete, sign, and return the medical certification portion of the death certificate to the funeral director or embalmer within 24 hours after death. The act allows an APRN to fill out the medical certification portion of the death certificate. Under existing law, in the absence of the physician, or with his consent, the medical certification can be filled out by an associate physician, chief medical officer of the institution in which the death occurred, or the pathologist who performed the autopsy. The act broadens this by (1) allowing an APRN to make the delegation and (2) allowing an APRN, RN, or physician assistant to make the certification.

The act prohibits any of these health care practitioners from signing and returning the medical certification unless he has personally viewed and examined the body and is satisfied that death has occurred. The act specifies that an additional viewing of the body is not required if the practitioner who completed the certification was not the one who made the death determination. This exception already applies if an RN makes the pronouncement.

Under the act, any practitioner listed above, rather than just physicians, refusing or otherwise failing to complete, sign, and return the medical portion of the death certificate within 24 hours can be reported to DPH by the funeral director or embalmer. DPH can fine the person up to \$250 a day, following notification and investigation.

The act requires an APRN, as the attending physician must already do, to give the funeral home or embalmer notice of the reason for delay when the cause of death cannot be determined within 24 hours of death

and the chief medical examiner does not require an inquiry. Final disposition of the body cannot be made without the signed medical certification from the physician or APRN.

CREMATION

The act requires that the final disposition of a cremated body be recorded at the crematory. The law requires that the chief, deputy chief, associate, or authorized assistant medical examiner complete the cremation certificate stating that no further inquiry is needed and file it with the registrar of vital statistics of the town in which the person died, or if not known, of the town where the body was found or with the registrar of the town of the funeral director who has the body.

The act requires the registrar, after receiving the certificate, to authorize it and keep it on permanent record. But if the certificate is submitted to the registrar of the town where the funeral director is located, the certificate must be forwarded to the registrar of the town where the person died and kept on permanent record.

The law requires crematory managers to keep record books that include information (name, age, sex, residence) on each person cremated, together with the authority for the cremation and the disposition of the ashes. Prior law required the owner or superintendent of the crematory to forward to the registrar receiving the cremation permit a certified duplicate of the record. The registrar had to keep this duplicate on file and record it with other vital statistics.

The act instead requires the crematory manager or superintendent to complete the required cremation permit, retain a copy for record keeping, and immediately forward the original permit to the registrar of the town in which death occurred. The registrar must keep the cremation permit on file.

BURIAL PERMITS

Burial Transit Removal Permit

The act requires a DPH-licensed embalmer or funeral director, or one licensed in a state with a reciprocal agreement with the state, who takes custody of a dead body to obtain a burial transit removal permit from the registrar of the town in which death occurred. It appears a "burial transit removal permit" takes the place of a "removal permit" under the act. This must be done within five calendar days after death and before final disposition or removal of the body from the state. The law requires a registrar to appoint people as subregistrars authorized to issue burial transit removal permits after receiving a completed death certificate. The act limits the subregistrar's authority to those hours

when the registrar's office is closed and establishes a fee of \$3 for a burial transit removal permit.

The act requires that, before any body is removed to any universities in the state for anatomical purposes, the person contemplating removal must get a burial transit removal permit. Prior law required a burial or transit permit.

Duties of Sextons

By law, the burial permit must note the place of burial by section, lot, grave, or other place of interment. The act requires the sexton to do this. It specifies that no additional burial transit removal permit is required for a body that is placed temporarily in a receiving vault of any cemetery and subsequently buried in the same cemetery.

The law requires each sexton in charge of any burial place to provide a monthly list of all interments, disinterments, and removals of bodies to the registrar of the town. He must also file with the registrar permits he

received when a body was brought into the town from another town or state for burial.

The act establishes a fine of up to \$100 per day on any sexton failing to make the appropriate filings described above within 14 days after the first week of the month.

Transporting a Body

The law allows state-licensed embalmers and funeral directors to remove a body from one town to another or to another state. It also allows embalmers and funeral directors from another state who comply with a reciprocal agreement with DPH to remove bodies from one town to another or to another state. The act allows embalmers and funeral directors to authorize an unlicensed employee to transport the body once it has been embalmed or prepared according to the Public Health Code. For removal of a body from this state to another, the act requires a burial transit removal permit instead of a death certificate as under prior law.

PA 04-7—SB 67*Public Safety Committee***AN ACT CONCERNING MUNICIPAL BINGO PAYMENTS**

SUMMARY: This act reduces the frequency with which the Division of Special Revenue must make bingo payments to towns to at least once, and at most four times, per year. Under prior law, it could make the payments as many as 12, but no fewer than four, times per year.

By law, the division must pay each town where bingo games are conducted .25% of the total wagered, less prizes awarded, in bingo games conducted in the town.

EFFECTIVE DATE: July 1, 2004

PA 04-27—sHB 5069*Public Safety Committee**Higher Education and Employment Advancement Committee***AN ACT REVISING VARIOUS PUBLIC SAFETY STATUTES**

SUMMARY: This act specifies that existing law's licensing and registration requirements for crane owners, crane operators, and crane operator apprentices should not be construed to require hoisting equipment owners to be licensed or registered by the Crane Operators' Board. The act also makes technical changes.

EFFECTIVE DATE: Upon passage

PA 04-41—SB 65*Public Safety Committee**Government Administration and Elections Committee**Legislative Management Committee***AN ACT CONCERNING MEMBERSHIP ON THE BOARD OF TRUSTEES FOR THE DEPARTMENT OF VETERANS' AFFAIRS**

SUMMARY: This act increases the membership of the Department of Veterans' Affairs board of trustees from nine to 16, giving one additional appointment to the governor, who appointed all the members under prior law, and one to each of the top six legislative leaders. The legislative leaders appointees' terms are coterminous with their appointing authorities' terms. The act specifies that World War II, Korean, and Vietnam Era veterans must be among the veterans on the board. By law, most of the members are veterans.

Members are not compensated but are reimbursed for necessary expenses incurred performing their duties.

The act also requires the board to submit to the Public Safety Committee, instead of just the governor, annual reports on its activities and recommendations for adding new programs and improving service delivery to veterans.

EFFECTIVE DATE: October 1, 2004

PA 04-44—SB 66*Public Safety Committee**Finance, Revenue and Bonding Committee***AN ACT ESTABLISHING AN APPLICATION FEE FOR A CONCESSIONAIRE AFFILIATE LICENSE**

SUMMARY: This act establishes a nonrefundable Division of Special Revenue license fee of \$200 annually for each concession a concessionaire affiliate operates at a dog track or an off-track betting (OTB) facility. The fee is the same for the following existing licenses: concessionaire, for each concession; vendor, for each contract; totalizator, for each contract; and vendor and totalizator affiliate, for each contract. (A totalizator provides equipment for pari-mutuel wagering.)

For purposes of the fee, the act defines (1) a "concessionaire affiliate" as a business organization, other than a shareholder in a publicly traded company, that may exercise control in or over a concessionaire and (2) a "concessionaire" as an individual or business granted the right to operate a for-profit activity at a dog track or OTB facility that grosses, or can reasonably be expected to gross, more than \$25,000 or 25% annually from the activity at the track or facility.

EFFECTIVE DATE: July 1, 2004

PA 04-59—sHB 5487*Public Safety Committee**Government Administration and Elections Committee***AN ACT REQUIRING THE ADOPTION OF A STATE FIRE PREVENTION CODE AND CONCERNING THE STATE BUILDING CODE AND THE FIRE SAFETY CODE**

SUMMARY: This act requires the state fire marshal to adopt a state fire prevention code based on a nationally recognized code to (1) enhance the enforcement capabilities of local fire marshals and (2) prevent fire and other related emergencies. This is in addition to the state Fire Safety Code already required by law. He must adopt the prevention code by January 1, 2005, in

coordination with a nine-member advisory committee the act creates, and revise it as necessary to incorporate revisions to the national code within 18 months after they are first published.

The act eliminates the requirement for the State Building Code to incorporate revisions of the International Code Council. It requires instead that the building and fire safety codes be based on nationally recognized model building and fire codes and requires both to be revised by January 1, 2005, and as necessary thereafter, to incorporate revisions to the model codes. It eliminates the requirement for fire safety code revisions every four years and instead requires them within 18 months after the model code revisions are first published, the same standard as for the State Building Code. But by law, the state fire marshal and Codes and Standards Committee may elect not to do the scheduled fire code revisions if they both certify the revisions are unnecessary.

EFFECTIVE DATE: Upon passage

ADVISORY COMMITTEE

This committee consists of nine members appointed by the state fire marshal. He must appoint two members from a list of Codes and Standards Committee members the committee submits. The other seven must represent local fire marshals, deputy fire marshals, and fire inspectors, selected from a list provided by the Connecticut Fire Marshals Association.

PA 04-79—HB 5567

Public Safety Committee

AN ACT REVISING VARIOUS PERMITS

SUMMARY: This act increases, from one to five, the number of class 5 and class 6 raffle permits the Division of Special Revenue (DSR) may issue to an applicant in any year. It thereby increases the number of raffles such permittees may conduct and the maximum aggregate value of prizes they may award in any year under (1) a class 5 permit, from \$50,000 to \$250,000 and (2) a class 6 permit, from \$100,000 to \$500,000. By law, the maximum aggregate value of prizes that may be offered under a single class 5 permit is \$50,000; under a single class 6 permit, it is \$100,000.

The act also extends the deadlines for conducting raffles under the permits, from six to nine months from the granting of class 5 permits and from nine months to one year for class 6 permits.

EFFECTIVE DATE: July 1, 2004

BACKGROUND

Bazaar and Raffle Permits

In addition to class 5 and 6 permits, DSR issues five other bazaar and raffle permits. Table 1 shows these five permits, the limitations on the number of events allowed for each class, the value of prizes that may be awarded, and the deadlines for conducting the events permitted.

Table 1: Bazaars and Raffle Permits

<i>Permit Class</i>	<i>Number Per Calendar Year</i>	<i>Number of Events Allowed</i>	<i>Maximum Aggregate Value of Prizes</i>	<i>Deadline for Holding Events</i>
1	1	One raffle	\$15,000	3 months
2	3	One raffle	\$2,000	2 months
3	2	One 10-consecutive day bazaar	NA	6 months
4	1	One raffle	\$100	1 month
7	NA	12 prize drawings	\$50,000	15 months

PA 04-110—HB 5065

Public Safety Committee

AN ACT CONCERNING THE INSPECTION OF AMUSEMENT RIDES

SUMMARY: This act requires the public safety commissioner to approve qualified inspectors, in addition to civil engineers, to conduct the required annual inspection of amusement rides and devices, subject to the standards that currently apply to civil engineers. It requires the inspectors, but not the engineers, to be certified to perform safety inspections of amusement rides and devices by a nationally recognized professional or trade association of amusement ride safety officials approved by the commissioner.

EFFECTIVE DATE: October 1, 2004

PA 04-150—HB 5486*Public Safety Committee**Planning and Development Committee**Legislative Management Committee***AN ACT CONCERNING BUILDING OFFICIALS AND INSPECTORS**

SUMMARY: This act makes several unrelated changes to the building code statutes. It requires the state building inspector and Codes and Standards Committee, with the public safety commissioner's approval, to (1) adopt regulations establishing statutorily required code enforcement licensure classes, including the basic requirements for each program and a system of control and reporting, and (2) require continuing education programs for each class of licensed code enforcement officials. Existing law additionally requires building officials to attend at least 90 hours of continuing education over consecutive three-year periods.

The act eliminates the requirement for municipalities to pay for the building officials' training and requires instead that the education fees assessed on building permit applications pay for the training of all the code officials.

It exempts from demolition permit registration requirements anyone (1) burning a building or structure as part of an organized fire department training exercise or (2) removing underground petroleum storage tanks.

The act allows aggrieved building owners to appeal to the local board of appeals any building official's decision involving code matters. Prior law permitted appeals only when a building official denied a permit or notified an owner that unlicensed workers were working at his site.

The act also allows a building official to ask the state building inspector to retire the official's license or certificate and issue an emeritus certificate. A building inspector emeritus may not describe himself as a licensed or certified official.

EFFECTIVE DATE: October 1, 2004

BACKGROUND*Classes of Licensure*

By law, the state building inspector and the Codes and Standards Committee must establish licensure classes that recognize the various complexities of code enforcement. The classes are as follows:

1. building official,
2. assistant building official,
3. residential building inspector,
4. plan review technician,
5. mechanical inspector,
6. electrical inspector,

7. plumbing inspector,
8. heating and cooling inspector, and
9. construction inspector.

PA 04-169—sSB 239*Public Safety Committee**Appropriations Committee***AN ACT CONCERNING THE DEPARTMENT OF VETERANS' AFFAIRS**

SUMMARY: This act increases the number of veterans eligible for burial in the state veterans' cemeteries and admission to the state Veterans' Home and Hospital (VHH), which the act renames the Veterans' Home. It does this by eliminating war service as a criterion for burial or admission, making any veteran honorably discharged from active service in the U.S. Armed Forces eligible.

The act specifies that the Veterans' Home must be located in Rocky Hill. It makes the law conform to practice by explicitly allowing other funds besides state funds to be used to pay for hospital expenses incurred by veterans who have no adequate means of support.

The act eliminates obsolete provisions that (1) required the Department of Veterans' Affairs commissioner to appoint a deputy to administer the veterans' advocacy and assistance unit and (2) made the deputy commissioner a nonvoting member of the Veterans' Affairs board of trustees. (The deputy commissioner's position was eliminated several years ago.) It allows the commissioner to appoint a unit head.

The act repeals provisions requiring the Department of Consumer Protection to issue a club permit allowing the retail sale of wine and beer at the VHH. VHH no longer operates a facility requiring this permit.

The act eliminates the Persian Gulf War Information and Relief Commission, which was created in 1997 to get information on the health effects of exposure to any Gulf War-related risk substances on state veterans who served in the Persian Gulf region during the Persian Gulf War. It also makes conforming and technical changes.

EFFECTIVE DATE: Upon passage

ELIGIBILITY CRITERIA FOR ADMISSION TO HOME AND BURIAL IN VETERANS' CEMETERIES

Under prior law, veterans honorably discharged from active service in the U.S. Armed Forces were eligible for admission to the state VHH if they served 90 days during wartime, as defined by CGS § 27-103, unless they were separated earlier because of a Veterans' Administration-rated service-connected

disability or served for the entire duration of a war that lasted less than 90 days. "Time of war" included any time served since August 2, 1990. Also, service with the armed forces of any government associated with the United States during the qualifying periods counts towards eligibility.

Under prior law, honorably discharged active-service veterans who served during wartime as defined in CGS § 27-122b were eligible for burial in the state veterans' cemeteries. The listed wars did not include any fought after the Lebanon peacekeeping mission (1982-1984), nor did the law include any minimum service requirement. It appears that, in practice, the Veterans' Affairs Department used the wars and minimum service requirement in CGS § 27-103 in determining burial eligibility.

The act eliminates war service as a criterion for both benefits and instead requires veterans to have been honorably discharged from an active-service status in the U.S. Armed Forces to qualify for the benefits. Under the act, the veteran does not have to have served for a minimum period.

HOSPITAL EXPENSES

By law, mentally ill veterans and veterans needing medical or surgical care or treatment may be admitted to certain hospitals at state expense if they do not have any adequate means of support. The law also requires certain hospitals to treat, at state expense, veterans the commissioner determines are entitled to admission. The act makes the law conform to practice by specifying that the state will bear the expense only if other funds or means of payments are not available. The law applies to an incorporated hospital or tuberculosis sanatorium, chronic disease hospital, and mental hospital or training school for people with mental retardation.

BACKGROUND

Persian Gulf War Information and Relief Commission

PA 97-144 created this commission and required it to advise the Department of Veterans' Affairs on (1) medical, administrative, and social assistance needed for veterans who were or may have been exposed to Gulf War-related risk substances; (2) recommendations for legislation; and (3) information that should be provided to veterans about epidemiological or other state or federal studies on exposure to the substances and any illnesses suffered by veterans as a result of such exposure. The law required the commission to submit annual reports to the governor and legislature by February 15. The commission submitted its final report in 2003.

PA 04-176—sSB 428

Public Safety Committee

Finance, Revenue and Bonding Committee

AN ACT INCREASING THE PARI-MUTUEL TAKEOUT RATE FOR OFF-TRACK BETTING AND DOG RACING EVENTS

SUMMARY: This act increases the takeout rate (the amount not returned to bettors) for certain types of bets at off-track betting (OTB) and dog racing facilities. By law, pari-mutuel licensees must distribute all the money in the pari-mutuel pool, less the takeout and breakage to the dime, to holders of winning tickets. ("Breakage to the dime" is the odd amount left over after each payoff is rounded down to the next dime.) Under prior law, dog racing licensees retained up to 18% for win, place, or show pools and up to 23% for other pools. The act increases the maximum takeout for win, place, or show pools to 19% and the maximum for other pools to 27%.

The act also increases the maximum takeout for OTB licensees from 23% to 24.5% of wagers made on three or more animals ("exotic wagering").

EFFECTIVE DATE: Upon passage

PA 04-192—sSB 70

Public Safety Committee

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING LICENSING AND TRAINING OF PRIVATE DETECTIVES AND GUARD SERVICES AND SECURITY PERSONNEL SERVICES

SUMMARY: This act makes extensive changes in the private security and private detective laws. It:

1. establishes separate licensing, qualification, and license revocation systems for existing licensees and sets more stringent licensing criteria;
2. establishes a \$20 license, renewable every two years, for security officers employed by security businesses and sets minimum training and licensing standards for them;
3. defines private security and private detective jobs to reflect current industry and State Police practice and to clarify what activities licenses cover;
4. conforms the law to practice and the state gun permit law by raising, from 18 to 21, the age at which a security officer may get a Department of Public Safety (DPS) gun permit to carry firearms on the job, and requires armed security officers annually to complete a DPS-approved refresher gun safety course;

5. requires that, as a condition of being licensed, an applicant for a security service, private detective, or private detective agency license provide the DPS commissioner with a copy of a certificate of general liability insurance for at least \$300,000, and requires such licensees to notify DPS within 30 days of any change in the status of the insurance or the currently required \$10,000 performance bond;
6. allows the commissioner to establish, by regulation, civil penalties of up to \$5,000 for private detective and private detective agency licensee violations;
7. applies current criminal penalties to a broader range of licensee violations;
8. eliminates combination licenses, adjusts license fees for the remaining existing licenses, and changes the renewal frequency for such licenses from one to two years;
9. requires the commissioner to adopt implementing regulations;
10. subjects special constables appointed by municipal chief executive officers at the request of corporations, associations, or businesses to any limitations, restrictions, and conditions the chief executive officer deems appropriate; and
11. makes miscellaneous minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2004

PRIVATE DETECTIVE AND PRIVATE SECURITY INDUSTRY

State law regulates a section of the private security and private detective industry through licensing and registration. Currently, security companies (businesses) must be licensed by DPS, whether they are run by an individual or corporate entity. Non-security businesses that hire their own personnel to provide security in-house are not licensed. Security officers are not licensed. But if they work for a security company, the company must register them with DPS, and if they carry firearms on the job, they must be registered, irrespective of who employs them.

Private detective businesses must be licensed by DPS, and they must register with DPS people they employ as private agents or operators, among others.

Generally, the law does not define the services that the various licenses cover.

PRIVATE SECURITY BUSINESSES

License Requirement

Under prior law, any business that contracted to provide guard, patrol, or watchman services (contract security companies) had to be licensed by DPS as a (1) security service, if the provider were an individual, or (2) security agency, if the provider were a corporate entity (i.e., corporation, association, or partnership). Private entities not in the security business that employed their own security officers (commonly called proprietary or in-house security officers) did not have to be licensed. The act eliminates the security agency license for corporate entities and instead requires them to be licensed as a security service.

Services Covered by License. Under prior law, the license was required for providing guard, watchman, or patrol services. The act broadens the range of services for which a license is required by defining "security service" as any person or corporate entity that charges to provide:

1. patrol and armored car services;
2. guard dog services;
3. security services for transporting papers, money, negotiable instruments, or other valuables;
4. security for patrons and people authorized to be on property the licensee is hired to protect;
5. services intended to prevent or detect intrusion, entry, larceny, vandalism, abuse, fire, or trespass on property the licensee is hired to protect; or
6. services intended to prevent, observe, or detect unauthorized activity on property the licensee is hired to protect.

License Eligibility Criteria. By law, license applicants must be at least age 25 and of good moral character and must undergo state and national criminal history record checks. Prior law required the applicant to have at least five years experience as a supervisor or administrator (1) in industrial security; (2) with a federal security agency or state or local police department; or (3) in the employment of a private guard, watchman, or patrol service. The act eliminates the last qualification and requires that the experience in industrial security be in supervisory management. It additionally allows licensure based on 10 years experience as a police officer or five years supervisory experience in a state security agency.

People Ineligible for Licensure as Security Service. By law, police officers and people vested with police powers are ineligible for licensure. Prior law also barred DPS from licensing anyone discharged from the military under other than honorable conditions. The act instead bars licensure for discharge under conditions

that demonstrate questionable moral character. Under prior law, people convicted of felonies or offenses involving moral turpitude were ineligible for licensure. The act adds to the crimes barring licensure convictions for the following 11 misdemeanors or their equivalent in any jurisdiction in the seven years preceding the application:

1. illegal possession of certain drugs;
2. criminally negligent homicide;
3. 3rd degree assault;
4. 3rd degree assault of an elderly, blind, disabled, pregnant, or mentally retarded person;
5. 2nd degree threatening;
6. 1st degree reckless endangerment;
7. 2nd degree unlawful restraint;
8. 1st or 2nd degree riot;
9. inciting to riot; and
10. 2nd degree stalking.

By law, the commissioner may deny a corporate license if any member of the corporate entity is a police officer or exercises police powers. He may also deny, suspend, or revoke a corporate license if it appears that 10% or more of the corporation's stock is held by anyone of questionable character.

The act makes the law conform to practice by allowing applicants for a security service license to appeal license denials, in writing, to the commissioner within 30 days after a denial.

SECURITY OFFICERS

New License Requirement

The act establishes a license for, and defines the term, security officers. This license is in addition to the existing registration requirement for such officers (see *Registration of Security Officers* below). The act requires DPS to add licensed security officers to the list of private detective and private security personnel that DPS must publish and distribute to police chiefs and Superior Court offices, and to licensees requesting it.

The act defines a "security officer" as any licensed and registered person hired to safeguard and protect people and property by (1) detecting or preventing unlawful entry, larceny, vandalism, abuse, arson, or trespass or (2) observing, detecting, or preventing unauthorized activity. The security officer may be employed by (1) a security service (i.e., security business) or (2) a non-security business as a uniformed employee who performs security work in an area of the business premises to which the public has unrestricted access or access only by paid admission.

The act requires anyone hired as a security officer by a security service to be licensed by DPS and sets licensing and minimum training and other standards for them. It does not appear to apply these criteria to

security officers employed by other businesses (i.e., non-licensees) to protect premises to which the public has unrestricted access or access only by paid admission.

License Eligibility Criteria. By law, security officers must be at least age 18 and of good moral character. As a condition of licensing under the act, they must complete at least eight hours of training in basic first aid, search and seizure laws and regulations, use of force, and basic criminal justice and public safety issues. The commissioner must approve the training according to regulations that the act requires him to adopt.

People Ineligible for Licensure. The act prohibits DPS from licensing as a security officer anyone (1) convicted of any felony, (2) convicted of a sexual offense or crime that raises questions about his integrity and honesty, (3) denied a security service or security officer license for any reason except minimum experience, or (4) whose license was ever revoked or is under suspension. Prior law barred registration of security officers on these same grounds.

The act bars licensing police officers and people vested with police powers. The law already applies this ban to private security and private detective business licensees.

Licensing Procedures. The act requires an applicant for a security officer license, rather than the security service that employs him, to provide the following information about himself, under oath, on a DPS form: his name, address, date and place of birth; employment in the last five years; experience in the position applied for; convictions, if any; and other information the commissioner's regulations require to properly investigate his character, competence, and integrity. The applicant must submit the initial application with two sets of his fingerprints and two full-face photographs of himself—two-by-two inches—taken in the past six months. The act conforms the law to current DPS practice by requiring security officers to undergo state criminal history record checks and additionally requires them to undergo national checks, both following the process outlined in law.

The commissioner may issue a security officer license if he finds the applicant suitable. As is currently required for private security service licenses, when the commissioner issues a security officer license, he must give the licensee a pocket identification card in a size and design he prescribes. The card must contain the licensee's name, photograph, and business address; license number and expiration date; and the imprint or impress of the Connecticut seal. The licensee must carry the card on the job and cannot lend it or let anyone else use, keep, or display it. The act prohibits unauthorized people from possessing, holding, or displaying a licensee's card.

License Suspension and Revocation. The act allows the commissioner to suspend or revoke a security officer's license, after notice and hearing opportunity, on the same grounds on which he may suspend and revoke a security service license under existing law. These are:

1. violations of private security laws and regulations;
2. fraud, deceit, and misrepresentation;
3. material misstatements in a license application;
4. incompetence or untrustworthy business conduct; or
5. conviction for a felony or other crime affecting the licensee's integrity, honesty, or moral fitness.

Appeal of Licensing Decisions. The act allows a security officer license applicant to appeal a denial, in writing, to the commissioner within 30 days after the denial. As is currently the case with security service licensees, the act allows security officers aggrieved by license suspensions or revocations to appeal under the Uniform Administrative Procedures Act (UAPA) to the New Britain judicial district court.

Registration of Security Officers

By law, (1) security officers employed by a security service must be registered with DPS; (2) security officers who carry firearms on the job must be registered, irrespective of who employs them; and (3) unarmed proprietary security officers (those employed to provide in-house security by firms not in the security business) may be registered at their employers' discretion.

Under prior law, the security service licensee had to apply to register its security officers with DPS immediately after hiring them. Under the act, the licensee must still register licensed security officers immediately upon hiring them. But it must delay applications to register any unlicensed security officer it hires until after the security officer completes his training and is licensed.

The act eliminates from the registration procedures certain fingerprint and photograph submission requirements and applicant suitability findings, among other things, and instead makes them part of the security officer licensing process described above. By law, the State Police must keep the completed registration and all related material on file.

The act raises the registration fee from \$13 to \$20.

Armed Security Officers

By law, security officers who carry firearms on the job must get a special DPS permit, in addition to and after getting, the DPS gun permit required by anyone

carrying a gun in the state. The act conforms the law to practice and the existing state gun permit law by raising the minimum age for the armed security officer's permit from 18 to 21.

Under prior law, the armed security officer's permit expired five years after the date it became effective even if the state permit had already expired. The act makes the armed security officer's permit coterminous with the state gun permit.

By law, armed security officers must complete a DPS-approved gun safety and use course as a condition of getting the special gun permit. The act additionally requires them to complete a DPS-approved refresher gun safety course every year.

By law, a violation of the armed security officer provisions carries a \$75 fine. Each offense is separate and distinct and for continuing violations, each day's continuance is a distinct and separate offense.

PRIVATE DETECTIVES AND PRIVATE DETECTIVE AGENCIES

License Requirement

By law, an individual operating a private detective or private investigator business must be licensed by DPS as a private detective; a corporate entity must be licensed as an agency. These licensees must register with DPS any agent, operator, guard, or other such employee they hire. Prior law did not define what activities the licenses covered. It also referred to a private investigatory license, which DPS did not issue.

Activities Covered by Licenses. The act defines a "private detective agency" as any person, firm, company, partnership, or corporation that, for consideration, advertises as providing, or is engaged in the business of providing, private detective services. It defines a "private detective" as someone engaged, or advertising as engaged, in the business of:

1. investigating crimes or civil wrongs;
2. investigating property location, disposition, or recovery;
3. investigating the cause of accidents, fire damage, or injuries to property or people, except people performing bona fide engineering services;
4. protecting people;
5. conducting surveillance activities or background investigations; or
6. securing evidence for use before a court, board, officer, or investigation committee.

The act eliminates references to a private investigator license. It conforms the law to practice by explicitly applying to agency applicants the licensing and other standards, including application procedures, that currently apply to individual private detective

applicants. The act does not change the application process.

Eligibility Criteria for Private Detective Business License. By law, applicants for a private detective license must undergo state and national criminal history record checks. They must be at least age 25 and of good moral character and have five years full-time investigator experience or at least 10 years experience as a police officer. Prior law specified that the investigator experience had to be with a licensed private detective or investigator, a U.S. government investigative service, a municipal fire or police department, or the Division of Public Defender Services. The act instead requires the commissioner to define the nature of the investigator experience in regulations that he must adopt under the act. By law, the commissioner may substitute up to one year of satisfactory participation in a course of instruction pertinent to the license.

People Ineligible for Private Detective Business License. The act expands the range of crimes and offenses that disqualify an applicant from licensure as a private detective. Under prior law, the disqualifying crimes and offenses were felonies or offenses involving moral turpitude. The act adds convictions for the same 11 misdemeanors or their equivalent in any jurisdiction in the past seven years barring licensure as a security service (see *License Eligibility Criteria* under PRIVATE SECURITY BUSINESSES above). It also bars licensure of anyone discharged from the military under conditions that demonstrate questionable moral character. Prior law barred licensing for discharge under other than honorable conditions.

License Denial, Revocation, and Suspension. By law, the commissioner may suspend or revoke private detective licenses for certain behaviors and criminal convictions. The act requires that before doing so for any 3rd degree assault or 2nd degree threatening conviction, he must consider the fact and circumstances surrounding the convictions. It limits license suspensions or revocations for fraud, deceit, or misrepresentation to cases that involve the licensee's clients. The act explicitly applies these same conditions to agency licensees.

Appeal of Licensing Decisions. By law, aggrieved parties may appeal the commissioner's suspension and revocation decisions pursuant to UAPA.

The act makes the law conform to State Police practice by giving applicants 30 days to appeal license denials to the commissioner in writing.

Registration of Employees of Private Detective Businesses

By law, private detective licensees must register with DPS all agents, operators, guards, watchmen, or

patrolmen they employ. The act increases the registration fee from \$13 to \$20, and it eliminates the requirement that the photographs submitted with a registration application show the applicant with and without head covering. It specifically requires people applying for registration to undergo state and national criminal history record checks. Under prior law, it was unclear if the requirement applied to such applicants.

Identification Documents

The act eliminates a requirement that a licensed agency issue to its uniformed investigators, operators, or agents an identification card in a size, color, and design the commissioner prescribes and with specified information. (The requirement still applies to the agency's nonuniformed staff.) The act also eliminates a requirement for index fingerprints on the identification card of a licensee's employee.

The act eliminates a requirement for the private detective licensee's DPS pocket identification to contain the licensee's fingerprints.

LICENSE FEES

The act eliminates combination licenses and revises license fees as follows:

License	Prior Law		Act	
	Original Fee	Renewal Fee	Original Fee	Renewal Fee
Private detective (Individual)	\$600	\$450	\$1,200	\$500
Private detective agency (Corporate)	\$750	\$600	\$1,500	\$800
Security service (Individual)	\$600	\$450	\$1,200	\$500
Security Agency (Corporate)	\$750	\$600	\$1,500	\$800
Private Detective and Security Service combined	\$600	\$300	Eliminated	Eliminated
Private Detective and Security Agency combined	\$750	\$450	Eliminated	Eliminated

The act also decreases the frequency of license renewals from one to two years.

Under the new licensing system, an association or partnership in the security business is licensed as a security service. Under prior law, it was licensed as a security agency.

The act shortens the grace period for license renewal for private detectives, private detective agencies, and security services from six months to 90 days after expiration. By law, a licensee who fails to renew within the deadlines must pay the original license fee.

FINES AND PENALTIES

The act extends current criminal penalties for violations of the private security and private detective laws to the violations it creates. Violations (except of the armed security guard provisions, which are subject to separate fines unchanged by the act) are subject to imprisonment for up to one year, a fine of up to \$5,000, or both. The act allows the commissioner to establish, by regulation, civil penalties of up to \$5,000 for violating the private detective and private detective agency provisions.

The act makes unlicensed people who engage in or solicit business as a security service ineligible for licensure for two years after they are penalized for this violation. It makes unlicensed people who engage in the private detective business or hold themselves out to be in such business ineligible for licensure for two years (but does not specify when the two year period begins). Under the act, experience operating a private detective business without a license does not count as experience for licensing purposes.

MISCELLANEOUS PROVISIONS

New Business Notification Requirement

By law, security service and private detective licensees must notify DPS of the location of all their branches or sub offices. The act requires the notification within five business days after the opening.

Inspection of Licensees' Records

Under the act, private detective businesses and security service licensees must allow DPS to inspect, review, or copy any document or business or training record that DPS regulations require them to maintain.

DPS Authority and Criminal History Record Checks

The act eliminates the commissioner's discretion to waive the mandatory state and national criminal background checks and fingerprinting submission for certain applicants employed by a licensed private detective or security service or agency in the last six months.

PA 04-195—sSB 315

Public Safety Committee

Appropriations Committee

AN ACT ALLOWING ACCESS TO THE SOLDIERS, SAILORS AND MARINES' FUND BY MEMBERS OF THE CONNECTICUT NATIONAL GUARD

SUMMARY: This act explicitly includes the Connecticut National Guard in the U.S. military service, thereby making guardsmen eligible for Soldiers, Sailors and Marines' Fund benefits if they serve at least 90 days in state active service during wartime, as defined in law. This includes state active service provided by guardsmen at the airports in the aftermath of the September 11, 2001 terrorist attacks.

By law, military service members honorably discharged from active service (i.e., veterans) are eligible to participate in the fund if they served at least 90 days during a statutorily defined period of war, unless they were separated earlier by a Veterans' Administration-rated service-connected disability or the war lasted less than 90 days and they served for the duration. Under the fund's procedures, an applicant must be living in Connecticut when applying for and receiving benefits from the fund.

EFFECTIVE DATE: Upon passage

SOLDIERS, SAILORS AND MARINES' FUND CLAIMS

This fund provides benefits such as food, clothing, medical, surgical, and funeral assistance to needy wartime veterans honorably discharged from active service in the U.S. military service (i.e., U.S. Armed Forces), their spouses living with them or who lived with them when they died, and dependent children. When called to active duty under federal law (i.e., federalized), National Guard members become a part of the U. S. military service (10 USC § 3062; 10 USC § 10106) and thus qualify for benefits from the fund, provided they meet the minimum 90-day service or earlier separation requirement and are honorably discharged. But under prior law, guardsmen called to state active service apparently did not qualify for fund benefits because when in a state active service status, the National Guard is not part of the U. S. military service.

By explicitly including the Connecticut National Guard in the definition of the U.S. military service, the act makes guard members eligible for fund benefits when they are called to state active service by the governor under Title 27 of state law or Title 32 of federal law.

BACKGROUND

Active Service and Active Duty

State law does not define “active service” or “active duty.” Federal law defines (1) “active service” as active duty or full-time National Guard duty and (2) “active duty” as full-time duty in the active military service of the United States (10 USC § 101(d)(3) & 10 USC § 101(d)(1)).

Time of War

Table 1 shows the wars and operations occurring since 1940 that qualify as “time of war” for purposes of wartime service benefits, including Soldiers, Sailors, and Marines’ Fund benefits. Service with the armed forces of any government associated with the United States during the qualifying periods counts towards eligibility.

Table 1: Post-1940 Wartime Service for Fund Benefits

<i>Operation</i>	<i>Dates</i>
World War II	12/7/41-12/31/46
Korean War	6/27/50-1/31/55
Lebanon*	7/1/58-11/1/58 or 9/29/82-3/30/84
Vietnam Era	2/28/61-7/1/75
Grenada invasion*	10/25/83-12/15/83
Operation Earnest Will (escort of Kuwaiti tankers flying U.S. flag in Persian Gulf)*	2/1/87-7/23/87
Panama invasion*	12/20/89-1/31/90
Persian Gulf War	8/2/90 until a date prescribed by the President or law

*Service must be in a combat or combat-support role

PA 04-232—sHB 5064

Public Safety Committee

Judiciary Committee

Appropriations Committee

AN ACT INCREASING THE WITNESS FEE PAID TO POLICE OFFICERS AND FIREFIGHTERS

SUMMARY: This act increases, from \$40 to \$100 per day, witness fees for police officers and firefighters, including volunteers or substitutes, in the following circumstances:

1. in criminal proceedings before the Superior Court or proceedings before the Department of Consumer Protection, if their employer does not compensate them for the time spent in court;
2. in civil proceedings on any vacation or compensatory day, even if their employer compensates them; and
3. in civil proceedings on other days, if their employer does not compensate them.

EFFECTIVE DATE: October 1, 2004

PA 04-237—HB 5488

Public Safety Committee

Planning and Development Committee

Appropriations Committee

Human Services Committee

Government Administration and Elections Committee

AN ACT REVISING THE STATE BUILDING CODE FOR SUBSTANTIAL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND CONCERNING MAIN ENTRANCES IN PLACES OF PUBLIC ASSEMBLY

SUMMARY: This act generally requires compliance with the State Building Code rather than explicit statutory specifications regarding handicapped access. It effectively brings certain structures and parking spaces into more complete compliance with the accessibility requirements of the 1990 federal Americans with Disabilities Act (ADA) and the 1988 Fair Housing Amendments Act (FHAA). Beginning October 1, 2004, the act modifies accessibility requirements for parking spaces designated for use by the handicapped and requires accessibility features for residential facilities to conform to the standards in the building code rather than statutory specifications. It applies to (1) parking areas, garages, and terminals constructed under a building permit application filed on and after October 1, 2004; (2) state-assisted rental housing or rental housing projects with four or more dwelling units constructed or substantially rehabilitated under a building permit

application filed on or after October 1, 2004; and (3) other residential dwellings constructed, substantially renovated, or established by change of use under a building permit application filed on or after October 1, 2004.

The act also (1) requires the state building inspector and the Codes and Standards Committee to adopt standards in the building code, rather than regulations, governing the installation, operation, maintenance, and use of inclined chairlifts; vertical wheelchair or incline lifts; and limited-use, limited-access lifts and elevators and (2) requires that these limited-use, limited-access lifts and elevators be installed in accordance with the building code if they are installed in new buildings for which a permit application is filed on or after October 1, 2004. The act does not affect a similar joint review and approval process with respect to the existing process for requesting waivers or variances from the building code's accessibility requirements.

The act also permits variations and exemptions from standards for exits in places of public assembly. **EFFECTIVE DATE:** October 1, 2004 except the provision permitting variations and exemptions from standards for exits in places of assembly is effective upon passage.

USE OF STATE BUILDING CODE STANDARDS

By law, the State Building Code must be revised to be in substantial compliance with both the ADA and FHAA. These two federal laws establish a broad set of accessibility requirements for a wide variety of buildings, facilities, and residential dwellings.

The statutes this act affects generally predate these federal laws and establish requirements that differ from them in some cases. Since the building code must reflect the requirements of ADA and FHAA, use of it rather than the specific statutory requirements as the basis for these accessibility features and accommodations would apply standards that more closely follow the federal requirements.

The act also revises the building code exemption provisions to conform them to ADA and FHAA requirements. It eliminates exemptions for several specific use groups and building types but maintains the exemption for detached one- and two-family dwellings. It also modifies the exemption for (1) renovations, additions, or alterations to existing buildings above the street floor being converted to use group B "Business Buildings" as defined in the building code and (2) buildings up to three stories not otherwise exempted by adding an additional qualifying condition. In the former case, the nonaccessible story above the street cannot include offices of health care providers, municipal or state agencies or passenger transportation facilities, or offices located in airport terminals. In the latter case,

the nonaccessible floor above or below the street floor cannot include the offices noted above or mercantile facilities having five or more tenant spaces.

HANDICAPPED PARKING SPACES

Under prior law, handicapped parking spaces had to be (1) 15 feet wide, including three feet of cross hatch or (2) parallel to a sidewalk on a public highway. The act requires that, beginning October 1, 2004, (1) handicapped spaces for passenger vehicles include five feet of cross hatch and (2) handicapped spaces for passenger vans measure 16 feet by eight feet, including the cross hatch. For both types of vehicles, the act eliminates the option of being located parallel to a sidewalk as an alternative to having the hatched area.

The act reduces, from 9 feet, six inches to 8 feet, two inches, the amount of vertical clearance public garages and terminals must have to access at least two parking spaces for passenger vans unless granted an exemption. The requirement applies to garages and terminals constructed under a building permit application filed on or after October 1, 2004.

PLACES OF PUBLIC ASSEMBLY

Under prior law, any place of public assembly constructed or renovated after July 9, 2003 to increase capacity or change its occupancy had to have a main entrance to allow the emergency exit of two-thirds of the building's capacity during an emergency. The act limits the requirement to places constructed under a building permit application filed on or after October 1, 2004, if they have a single main entrance.

The act allows the state fire marshal and state building inspector to grant variations or exemptions or approve equivalent or alternate compliance if they believe strict compliance would entail practical difficulty or unnecessary hardship or is unwarranted. When making such a determination, they must observe the act's intent and assure public safety. They must put the determination in writing.

Anyone aggrieved by the officials' decision may appeal to the Codes and Standards Committee within 14 days after the decision is mailed. Anyone aggrieved by the committee's decision may appeal to the Superior Court.

PA 04-241—sSB 62*Public Safety Committee**Judiciary Committee**Appropriations Committee***AN ACT PROVIDING BENEFITS AND PROTECTION FOR VOLUNTEER CANINE SEARCH AND RESCUE MEMBERS****SUMMARY:** This act:

1. gives state employees who are active members of volunteer canine search and rescue teams the same employment protections that existing law gives to volunteer firefighters and emergency services personnel who respond to calls during or before coming to work;
2. adds people who are members of such teams to the volunteer firefighters and emergency services personnel to whom towns may give property tax relief;
3. (a) makes it a crime to intentionally assault people who are members of such teams or to intentionally kill or injure their dogs while such people and dogs are performing their duties and (b) increases the penalty for intentionally killing a peace officer's animal performing its duties; and
4. allows active team members and their dogs engaged in search and rescue operations to ride on public transportation and enter or visit places of public accommodation without being charged any extra fee that does not apply to all guests, so long as the dog is identified.

The act also gives employment protection to any sworn state and local police officer who takes a leave of absence to participate in international peacekeeping operations under the supervision of the United Nations, the Organization for Security and Cooperation in Europe, or other sponsoring organizations. Although the act also discusses police officers who resign for the same purposes, it does not explicitly provide the same reinstatement privileges for them.

EFFECTIVE DATE: October 1, 2004, except for the provision on employment protection for peacekeepers, which takes effect upon passage.

VOLUNTEER CANINE SEARCH AND RESCUE TEAMS*Definition*

The act defines “a volunteer canine search and rescue team” as an individual and a dog (1) appropriately trained and certified to undertake search and rescue operations by a nonprofit canine search and rescue organization that is a member of the National

Association of Search and Rescue or its successor organization and (2) who jointly engage in such operations at the request of a police officer or fire department and provide services without compensation.

Response to Search and Rescue Calls

The act allows state employees who are active members of volunteer canine search and rescue teams to respond to search and rescue calls without prior employer authorization before they report to work, and with their employers' authorization during regular work hours, without losing pay, vacation time, sick leave, or earned overtime. In such cases, employees must provide employers with a written statement from the police or fire chief verifying and specifying the date, time, and duration of the response, if the employers ask for one.

Property Tax Exemption for Canine Search and Rescue Team Personnel

The act allows a town to adopt an ordinance providing tax relief to people who are active members of volunteer canine search and rescue teams. Towns may already provide such relief to volunteer firefighters, emergency medical technicians, paramedics, ambulance drivers, and nonsalaried local civil preparedness directors and staff. By law, the relief may take the form of (1) an abatement of up to \$1,000 in property taxes due in any fiscal year or (2) an exemption of \$1 million divided by the mill rate (expressed as a whole number per \$1,000 of assessed value) at the time of the assessment.

Assault on Canine Search and Rescue Team Personnel

The act makes it a class C felony (see Table on Penalties) for anyone to assault a reasonably identifiable person performing his duties on a volunteer canine search and rescue team, with intent to prevent him from performing his duties, by doing any of the following to him: (1) injuring; (2) throwing potentially damaging objects; (3) using tear gas, Mace, or a similar agent; (4) throwing paint, dye, or any other offensive substance; or (5) throwing bodily fluid, such as feces, blood, or saliva.

It is already a class C felony to commit this type of assault on any of the following reasonably identifiable people to prevent them from performing their duties: peace officers, firefighters, emergency medical service personnel, emergency room physicians and nurses, Department of Correction employees, Board of Parole members and employees, probation officers, Judicial Branch employees providing pretrial secure detention or programming services to delinquent children, some Department of Children and Families employees, and employees of a municipal police department assigned to

provide security at the police department's lockup and holding facility.

Penalty for Injuring or Killing Volunteer Canine Search and Rescue Dogs

The act makes it a crime, punishable by a fine of up to \$5,000, imprisonment for up to five years, or both, to intentionally injure (1) any animal performing its duties while being supervised by peace officers or (2) any dog that is a member of a volunteer canine search and rescue team performing its duties under the supervision of a person who is an active team member.

The act increases the penalty for intentionally killing an animal performing its duties under a peace officer's supervision from a fine of up to \$5,000, imprisonment for up to five years, or both to a fine of up to \$10,000, imprisonment for up to 10 years, or both. It establishes the same penalty for intentionally killing a dog that is a member of a volunteer canine search and rescue team while the dog is performing its duties under a team member's supervision.

Charge for Staying in a Place of Public Accommodation

The act allows people who are active volunteer search and rescue team members and their dogs to ride public transportation and visit places of public accommodation without being charged any extra fee that does not apply to all the guests so long as (1) the team is engaged in a search and rescue operation, (2) the team member has direct custody of the dog, and (3) the dog wears a harness or red or orange-colored identification. The dog owner is liable for any damage the dog does to the premises or facility.

The act makes it a class C misdemeanor to deny these transportation and accommodation rights to people who are active team members who comply with the act. Under the act, a "place of public accommodation" is any place that caters to or offers its services, facilities, or goods to the public, including any public building, inn, restaurant, hotel, motel, tourist cabin, amusement place, resort, or public facility.

JOB PROTECTION FOR POLICE OFFICERS

The act protects the job of any state or local police officer who takes a leave of absence to participate in international peacekeeping operations under the supervision of the United Nations, the Organization for Security and Cooperation in Europe, or other sponsoring organization. Employment must be with a company the United States State Department has contracted with to recruit, select, equip, and deploy police officers for such operations. The employing department must restore the officer to the position he held when he took leave or, if unavailable, to an equivalent position with equivalent benefits, pay, and other employment terms and conditions.

The act also refers to police officers who resign to participate as peacekeepers in the same circumstances. But it does not appear to explicitly provide job protection for them when they return.

PA 04-256—SB 63

Public Safety Committee

Judiciary Committee

AN ACT CONCERNING THE GAMING POLICY BOARD

SUMMARY: This act expands the role of the Gaming Policy Board, requiring it to work with the Division of Special Revenue (DSR) to implement and administer the laws pertaining to the state lottery and charitable gaming (i.e., bingo, sealed tickets, and bazaars and raffles). It specifically requires the board to help the DSR executive director (1) develop and approve regulations to carry out the lottery and charitable gaming statutes and (2) hear appeals of charitable gaming issues.

The act gives the right of appeal to people aggrieved by the DSR executive director's decision to (1) suspend or revoke a registration or permit or (2) fine them for violations of the charitable gaming laws. They may appeal the executive director's decision to the Gaming Policy Board, and the board's decision to Superior Court.

EFFECTIVE DATE: July 1, 2004

PA 04-92—sSB 26

*Transportation Committee
General Law Committee*

**AN ACT CONCERNING THE PROVISION OF
AIR COMPRESSORS FOR TIRE INFLATION
FOR FREE PUBLIC USE**

SUMMARY: This act requires anyone licensed to sell fuel at a retail food store he owns and operates and which dispenses less than 10,000 gallons of gasoline in a month to provide free public use of an air compressor during business hours for tire inflation. Fuel retailers meeting these criteria previously were exempt from the free air requirements. All other entities licensed to sell motor fuel at retail must already provide free air for tire inflation during their normal business hours.

By law, fuel retailers subject to the free air requirements must post a state-approved sign in a conspicuous location on the premises informing the public of the availability of free air during business hours. The air compressor must be able to produce at least 80 pounds per square inch outlet pressure.

EFFECTIVE DATE: October 1, 2004

PA 04-143—sHB 5031

*Transportation Committee
Finance, Revenue and Bonding Committee
Legislative Management Committee
Government Administration and Elections Committee*

**AN ACT REVISING CERTAIN LAWS OF THE
DEPARTMENT OF TRANSPORTATION**

SUMMARY: This act makes numerous changes to laws affecting the Department of Transportation (DOT) and the Connecticut Transportation Strategy Board (TSB). It:

1. (a) creates a Connecticut Maritime Commission to advise the transportation commissioner, governor, and legislature and create a maritime policy for the state and (b) abolishes the Connecticut Port Authority;
2. creates a State Maritime Office within the DOT;
3. rescinds the fare increases for the state-owned Glastonbury-Rocky Hill and Chester-Hadlyme ferries imposed during the June 2003 Special Session;
4. eliminates the 2036 end date for the TSB projects account receiving certain fee increases (known as "incremental revenues") made during the June 2003 Special Session that the TSB uses to fund the projects and

programs that the legislature has identified as priorities;

5. raises, from \$1,000 to \$5,000, the threshold above which DOT property acquisitions and settlements must be reviewed and approved by the State Properties Review Board;
6. expands the DOT commissioner's authority to make agreements with public utilities governing the longitudinal use of highway rights-of-way to include all state highways, instead of only state limited-access highways;
7. makes the commissioner's annual inspection of all rail lines in Connecticut discretionary rather than mandatory;
8. requires the commissioner to consult with the public safety commissioner and the Department of Information Technology's chief information officer and develop a plan to notify people of significant highway and railway incidents;
9. requires DOT to allocate annually any amount of federal funds transferred to the Section 402 highway safety grant program pursuant to the federally mandated open container law "penalty transfer" for hazard elimination activities and earmarks \$200,000 of any such amount for FY 2005 for hardware, software, and other costs for a video incident responder system for I-95 to aid in coordinating emergency responses to highway incidents;
10. allows the commissioner to issue overlength permits to vehicles carrying divisible loads that, in the aggregate, do not exceed 53 feet in length;
11. conforms Connecticut law establishing the maximum allowable length of a truck and trailer combination to mandatory federal requirements;
12. allows TSB projects to be funded from other available TSB funds to the extent money is not available from either the Special Transportation Fund (STF) or the Infrastructure Improvement Fund, rather than just the latter;
13. makes payment of the incremental revenues identified in the approved annual financing plan for cash funding of TSB projects the second allocation priority for STF resources after payment of debt service on special tax obligation bonds but before debt service on general obligation bonds issued for transportation purposes and agency expenses;
14. modifies and corrects references to prior commemorative name designations of two highways, a tunnel, and a bridge made by PA 03-115;

15. names the planned extension of Route 72 from its current terminus in Plainville to Route 229 in Bristol as the "E. Bartlett Barnes Highway"; and
16. makes numerous technical and conforming changes.

EFFECTIVE DATE: Upon passage, except for the provisions relating to the creation of the maritime commission and maritime office, abolition of the Connecticut Port Authority, allocation of penalty transfer funds, and properties review board approval threshold, which are effective July 1, 2004 and the provisions relating to the truck-trailer length and divisible load length permits which are effective October 1, 2004.

CONNECTICUT MARITIME COMMISSION

Purpose

The act creates a 15-member Connecticut Maritime Commission in the DOT to (1) advise the commissioner, governor, and legislature on maritime policy and operations; (2) develop and recommend maritime policy to the governor and legislature; (3) support development of Connecticut's maritime commerce and industries, including its deepwater ports; (4) recommend investments and actions, including dredging, required to preserve and enhance them; (5) conduct studies and make recommendations on maritime issues; and (6) support Connecticut port development, including identifying new opportunities, analyzing the potential for and encouraging private port investment, and recommending policies that support port operations.

The act designates the commission as the successor to the quasi-public Connecticut Port Authority and abolishes the authority. The authority consisted of the transportation and economic and community development commissioners; a port professional from each of the state's three deep water ports in Bridgeport, New Haven, and New London; six members appointed by the governor; and six members appointed by the legislative leaders. The authority could accept aid, grants, and contributions and acquire, lease, purchase, own, and manage personal property, but could not raise revenue through other means, such as taxation or bonding. Its general functions were to promote the economic development of the state's port areas through a variety of planning, marketing, and analytical activities in support of the entities operating these port areas.

Membership

The commission consists of the transportation, economic and community development, and environmental protection commissioners, policy and management secretary, and TSB chairman, or their designees; four members appointed by the governor; and six members appointed, one each, by the Senate president, House speaker, and House and Senate majority and minority leaders. Appointed members must be qualified by experience and training, and include members of the public and (1) a representative of business and industry that regularly uses Connecticut port freight services, (2) a member or employee of a local port authority, (3) a Connecticut port operator, (4) a marine passenger service operator, (5) an elected or appointed official from a coastal community, (6) a user or provider of recreational marine services, and (7) a working member of a port labor union.

The governor must select the chairman from among the appointed members whose terms of service are coterminous with their appointing authorities and until their successor is appointed and qualified. The members must elect a secretary and may elect any other officers they see fit. Members are not compensated for their service, except for necessary expenses.

Annual Report and Other Duties

The commission must hold a public hearing each year for the purpose of evaluating adequacy of the state's maritime policy, facilities, and support for maritime commerce and industry. By January 1 annually, it must submit a written report to the transportation commissioner, governor, TSB, and legislature with (1) a list of projects that, if undertaken, would support the maritime policy and encourage maritime commerce and industry; (2) recommendations for improving maritime policies, programs, and facilities; and (3) other appropriate recommendations.

The act authorizes the commission to undertake any studies it finds necessary for the improvement of a balanced public transportation system in Connecticut, including its improvement for elderly and disabled users. The commission also has such other powers and duties as the commissioner, governor, and legislature delegate to it.

Miscellaneous Provisions

The DOT staff must be available to assist the commission. The commission must also have access through the DOT to all records, reports, plans, schedules, operating rules, and other documents pertaining to Connecticut ports and navigable waterways, except those pertaining to current or

pending labor negotiations with employee bargaining units.

A commission member who is also a public officer or employee may not lose his office or employment or any rights and privileges by reason of membership.

To conduct business, the commission must have a majority of its voting membership present. A majority of the quorum must approve any action.

STATE MARITIME OFFICE

The State Maritime Office that the act creates in the DOT must (1) be responsible for maritime operations, including the State Pier, Connecticut River ferries, and other operational responsibilities it is assigned; (2) serve as the governor's principal maritime policy advisor and the liaison between federal, state, local, and private entities involved in maritime policy activities; (3) coordinate state maritime policy activities; (4) encourage year-round use of water-related industries; (5) work with the Department of Economic and Community Development and state, local, and private entities to maximize the economic potential of Connecticut's ports and maritime resources; (6) conduct necessary planning and research; (7) assess potential state investments in ports and maritime facilities; (8) provide staff support to the Maritime Commission; and (9) undertake other responsibilities assigned by the commissioner or governor.

CONNECTICUT RIVER FERRY FARE INCREASES

The act restores the transportation commissioner's authority to set the fares for the Glastonbury-Rocky Hill and Chester-Hadlyme ferries. During the June 2003 Special Session, the legislature increased these fares to \$5 per vehicle, \$1.75 for each additional passenger, and \$1.75 for each walk-on and bicycle. The act eliminates these specific increases and, instead, allows the commissioner to fix these rates with the approval of the Office of Policy and Management secretary, which was the prior law. A provision of the law allowing the commissioner to establish a discounted commuter rate that was added by PA 03-1, September Special Session remains unchanged.

RAIL LINE INSPECTIONS

Previously, the transportation commissioner was required to inspect all rail lines in Connecticut at least once a year. The act makes this discretionary rather than mandatory. The Federal Railroad Administration also conducts annual track inspections and provides its inspection reports to DOT.

HIGHWAY AND RAILWAY INCIDENT NOTIFICATION PLAN

The highway and railway incident notification plan the commissioner must develop in consultation with the public safety commissioner and the chief information officer of the Department of Information Technology must be (1) instituted statewide, (2) generally available to anyone with e-mail, (3) free of charge for users, and (4) additional to any regional public or private program or agreement to track and inform individuals about significant highway or railway incidents.

ALLOCATION OF PENALTY TRANSFER FUNDS FOR HAZARD ELIMINATION PROJECTS

Federal law penalizes states that do not pass and enforce laws prohibiting possession of open alcohol containers by any occupants in the passenger compartment of a motor vehicle. The sanction requires 3% of federal funds apportioned annually under three highway construction programs to be transferred to the state's highway safety grant program. The funds are not lost to the state, but they may be used only for: (1) behavioral programs directed toward alcohol-impaired driving countermeasures or enforcement of impaired driving laws or (2) activities that are eligible expenditures under the hazard elimination program. The DOT may allocate all or part of the transferred federal funds to hazard elimination.

The act (1) directs DOT to allocate all of the funds subject to this transfer annually to hazard elimination activities, and (2) requires DOT to allocate \$200,000 of the transferred amount in FY 2005 for system hardware, software licenses, and configuration and installation costs for a video incident responder system to disseminate video transmissions from the I-95 video camera network to authorized law enforcement and emergency service personnel to better coordinate responses to highway incidents.

TRUCK-TRAILER LENGTH LIMIT

Prior law prohibited a combination of a truck and trailer that is longer than 60 feet unless it fell within one of several specific exemptions, most of which are required under federal law. The act increases the general limit from 60 to 65 feet to conform to a mandatory federal regulation that generally prohibits combination length limits under 65 feet.

COMMEMORATIVE ROAD AND BRIDGE NAMES

Corrections to Prior Designations

The act corrects the name for the West Rock tunnel in New Haven from the “Hero’s Tunnel” to the “Heroes Tunnel.” It changes one terminus of the portion of Route 173 in West Hartford that was designated as the “Trooper Carl P. Moller Memorial Highway” from the junction of Route 4 to the junction of Route 71 in West Hartford. It changes the designation made for the “Patrick L. Brooks Memorial Bridge” from Bridge No. 3485 in West Hartford on I-84 passing over Woodruff Road to Bridge No. 1743A in West Hartford on I-84 passing over SR 535. Finally, it makes a technical correction to the designation of Route 349 in Groton as the “William J. Snyder, Sr. Memorial Highway.”

BACKGROUND

Related Act

PA 04-149, An Act Concerning Funding of Transportation Strategy Board Projects, among other things, contains the same provisions regarding the allocation priority of incremental revenue for TSB projects, allowing TSB projects to be funded from other available TSB funds to the extent money is not available from the STF or the Infrastructure Improvement Fund, and the technical changes included in this act.

Prior Naming of Route 72 Extension

This act names the planned extension of Route 72 to Route 229 in Bristol the “E. Bartlett Barnes Highway.” However, a prior act of the legislature (PA 99-181 § 27) unchanged by this act, already named this same planned extension “Bristol Expressway.”

PA 04-161—sSB 411

Transportation Committee

Public Safety Committee

Planning and Development Committee

AN ACT CONCERNING LAMPS AND FLASHING LIGHTS ON EMERGENCY VEHICLES

SUMMARY: Previously, flashing or revolving white lights could be displayed on motor vehicles of paid or volunteer fire chiefs and their first and second deputies or first and second assistants, if there were no deputies. This act removes the explicit limit on the number of deputy or assistant chiefs and instead allows up to a total of four paid chiefs, deputies, and assistants and four volunteer chiefs, deputies, and assistants per

municipality to display such lights. It also allows the flashing or revolving white lights to be displayed in combination with flashing or revolving red lights.

EFFECTIVE DATE: October 1, 2004

PA 04-177—sHB 5233

Transportation Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE TRANSPORTATION STRATEGY BOARD

SUMMARY: This act:

1. increases the fee for an original issue driver’s license from \$1 per month with a maximum of \$4 for any six-month period, plus the sum of \$5.25, to \$44 for a four-year license, \$66 for a six-year license, and \$11 for any single year or part of a year;
2. accelerates, to July 1, 2004 from July 1, 2005, the transfer of one-half of the incremental revenues derived from fee increases on various motor vehicle documents, records, and record searches made by PA 03-1, June 30 Special Session to the Transportation Strategy Board (TSB) project account;
3. transfers \$150,000 during FY 2005 from the TSB project account to the Department of Transportation (DOT) to support implementation of the increased motorist assistance services recommended by the TSB;
4. authorizes spending \$60,000 from the TSB account during FY 2005, with the TSB’s approval, to support the preparation and distribution of highway diversion plans recommended by the TSB;
5. authorizes spending up to \$5,000,000 from the TSB project account in FY 2005, with its approval, for continuing the TSB’s Fairfield County Inter-Regional Bus Service, New Haven Line Commuter Connection, Danbury Area Feeder Bus Service, Shoreline East Service extension, Southeast Connecticut Jobs Access-Dial-A-Ride, and Hartford Area Express Bus Service projects. The TSB must evaluate each of these projects and submit its findings and recommendations to the governor and legislature by January 1, 2005;
6. authorizes spending up to \$600,000 from the TSB project account during FY 2005 to support continuing state operating assistance to Tweed-New Haven Airport, provided New Haven continues at least its current level of operating subsidy to the airport and no such funds are expended to provide either direct or

- indirect subsidies or financial assistance to any carrier;
7. authorizes up to \$2,000,000 to be spent during FY 2003-04 from the TSB project account, with its approval, for DOT expenses incurred in connection with these TSB "Section 16" projects—the Deduct-a-Ride Program, Southeast Corridor Tourism Service-Single Ticket Fare Structure, Capitol Region Council of Governments-New Britain Busway, and the Southeast Connecticut Jobs Access-Dial-A-Ride;
 8. requires up to \$640,000 to be transferred during FY 2005 from the TSB project account to the Office of Policy and Management to fund the grant to regional planning agencies, councils of governments, and councils of elected officials;
 9. carries forward to FY 2005 any unexpended balance of funds appropriated to the DOT for the TSB in 2001, 2002, and 2003 legislative acts;
 10. requires the balance of funds carried forward for various projects and expenditure amounts identified in § 36 of PA 03-4, June Special Session for TSB projects to be deposited in the TSB projects account; and
 11. gives the DOT commissioner until October 1, 2004 instead of October 1, 2003, to submit to the Transportation Committee the required annual report on the program it must establish to implement regularly scheduled and enforced hours of operation for the state's weigh stations.

The act increases the fee only for original issue driver's licenses. For example, the fee for an original license issued for six years would increase from \$53.25 to \$66. The fee for license renewals was increased by PA 03-4, June Special Session.

EFFECTIVE DATE: July 1, 2004, except the \$2 million authorization for Section 16 projects, the accelerated deposit of incremental revenues into the TSB projects account, the transfer of the balance of carried forward funds for previously identified projects into the TSB account, and the date change for the DOT report on its program for weigh station operations are effective upon passage

BACKGROUND

Section 16 Projects

Section 16 projects are a group of programs and projects that were identified as priorities in the original TSB legislation (section 16 of PA 01-5, June Special Session) for use of certain funds that were made

available to the TSB for implementation of initiatives that would meet certain needs it identified in its initial transportation strategy.

TSB Project Account

The TSB project account was created by PA 03-4, June Special Session as the repository for certain motor vehicle-related fee increases, known as "incremental revenues," that were made available to the TSB to fund several TSB strategy projects identified in the legislation as priority projects.

Related Act

PA 04-4 (§ 6) increases the fee for original issue driver's licenses to \$43 for a four-year license, \$65 for a six-year license, and \$11 per year or any part of a year. It also increases the fee for a two-year license issued to someone age 65 or older from \$19 to \$21 (§ 7).

PA 04-182—sHB 5474

Transportation Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING REVISIONS TO CERTAIN DEPARTMENT OF MOTOR VEHICLE STATUTES

SUMMARY: This act increases certain Department of Motor Vehicles (DMV) fees. It designates the additional revenue attributable to the increased fees as "incremental revenue" and requires it to be deposited, along with the other incremental revenue from previously raised fees, in the Connecticut Transportation Strategy Board (TSB) projects account and used to fund projects and programs the legislature has identified as priorities for implementing the board's transportation strategy.

Finally, the act authorizes the DMV commissioner to suspend or revoke the registration of any vehicle owner who fails to pay any fee required under the motor vehicle emissions inspection law. By law, vehicle owners must pay a \$20 fee for an emissions inspection and another \$20 fee if they are more than 30 days late for a required inspection. The \$20 inspection fee is collected at the inspection station or else the inspection is not conducted. The late fee must be paid to DMV. The act, in effect, authorizes the commissioner to move against the vehicle registration if the owner fails to pay the late fee. It also explicitly authorizes him to revoke, as well as suspend, a registration for noncompliance with inspection requirements.

EFFECTIVE DATE: July 1, 2004, except for the provisions designating the fee increases as incremental

revenues and putting them in the TSB projects account, which take effect upon passage.

FEE INCREASES

The fees increased by the act are shown in the table below.

Table 1: Fee Increases

<i>Activity</i>	<i>Prior Fee</i>	<i>New Fee</i>
Transferring Registration From One Vehicle to Another (same owner)	\$11.00	\$20.00
Changing the Name of Record on a Current Registration Certificate	\$12.00	\$20.00
Temporary Registration of a Passenger or Dealer's Car, Motorcycle, or Sidecar (10 days or less)	\$7.00	\$20.00
Temporary Registration When Vehicle is Used to Transport Passengers for Hire (10 days or less)	\$6.00/Day	\$25.00 if 6,000 lbs. or less; \$46.00 if over 6,000 lbs.
Check Returned to DMV as Uncollectible	\$15.00 for checks up to \$100; 15% of the amount for checks between \$100 and \$200; \$35.00 for checks over \$200	\$35.00 for checks up to \$200; 15% of the amount for checks over \$200 with no upper limit
Permit to Conduct Motor Vehicle Auction	\$13.00	\$20.00
Duplicate of a License to Operate a Commercial Driving School	\$7.00	\$20.00
Commercial Driving School Instructor's License	\$10.75	\$50.00
Special Use Registration (issued	\$10.00	\$20.00

for vehicle being driven to another state where it will be registered and exclusively used)		
Annual Flashing Light Permit	\$7.00	\$20.00
DMV Record Copy Search	\$7.00	\$20.00
Assignment of a Security Interest Noted on a Title Certificate or Maintained in the Electronic Title File	\$3.50	\$10.00
Ordinary Title Certificate Issued upon Surrender of a Distinctive Certificate	\$3.50	\$10.00
Filing Notice of Security Interest	\$3.50	\$10.00
Certificate of Search of DMV Records per Name or Number Searched	\$17.50	\$20.00
Filing Assignment of Security Interest	\$3.50	\$10.00
Search of Title Certificate Record Requested by Other than Owner	\$10.00	\$20.00
Service of Process Upon DMV Commissioner (fee is taxed in favor of plaintiff in his costs if he prevails in the action for which process is served)	\$5.00	\$20.00

BACKGROUND

Related Acts

PA 04-143, An Act Revising Certain Laws of the Department of Transportation, among other things, eliminates the 2036 end date for the TSB projects account receiving incremental revenue and makes technical changes to the law containing the fees for commercial driving schools that this act also amends.

PA 04-149, an Act Concerning Funding of Transportation Strategy Projects, among other things, also amends the law regarding deposit of incremental revenue in the TSB projects account by specifying that

the account is located in the Special Transportation Fund rather than the Infrastructure Improvement Fund.

PA 04-199—sSB 27

Transportation Committee

Finance, Revenue and Bonding Committee

Appropriations Committee

**AN ACT CONCERNING EFFICIENCIES OF THE
DEPARTMENT OF MOTOR VEHICLES AND
REVISIONS TO CERTAIN MOTOR VEHICLE
STATUTES**

SUMMARY: This act:

1. establishes requirements for the commissioner of the Department of Motor Vehicles (DMV) to implement ignition interlock sanctions for people convicted twice for driving under the influence of alcohol; applies existing prohibitions on tampering with or circumventing interlock devices, soliciting another person to blow into the device, and operating a non-interlock-equipped vehicle in violation of a court order to interlock devices ordered by the commissioner as well; and eliminates references to vehicle immobilization devices as an alternative to ignition interlock devices;
2. allows the commissioner to discontinue issuing special interest license plates (issued to qualifying nonprofit organizations and under certain statutory mandates) if he determines that demand for the plates is insufficient to support production costs and he notifies the qualified organization in writing of his intent;
3. allows, rather than requires, the commissioner to provide stickers for vehicles that are exempt from emissions;
4. authorizes the commissioner to suspend or revoke a vehicle registration for failure to pay fees required under the motor vehicle emissions inspection program, and makes related changes;
5. eliminates DMV oversight of motor vehicle racing events or exhibitions, eliminates permit requirements for such events, and makes related changes;
6. increases the registration period for taxicabs, livery service vehicles, and service buses from one to two years and increases the registration fees accordingly;
7. expands the requirement that the commissioner issue second-year fee refunds for registrations returned with one year or more remaining to all vehicles instead of only specified registration classes;
8. exempts certain businesses that auction construction equipment from motor vehicle dealer licensure and auction permit requirements and makes violations of the auction licensure and permit requirements punishable with criminal penalties rather than a civil fine;
9. eliminates requirements for certain offenders and others to file a certificate of financial responsibility with DMV under certain circumstances;
10. imposes a \$5 assessment on fines or forfeited bonds for speeding, reckless driving, and driving under the influence of alcohol or drugs and requires the assessments to be deposited in a newly created General Fund account for use by the Department of Social Services for grants to the Brain Injury Association of Connecticut;
11. eliminates the \$50 civil penalty the commissioner may impose for failing to comply with a defective equipment warning and allows him to suspend registration privileges until the vehicle is brought into compliance;
12. defines a pickup truck for registration purposes and specifies the type of registration it may get;
13. limits the minimum \$15 fee DMV must charge for certain driver history records it provides to businesses for their business purposes only to for-profit businesses making such requests;
14. requires the commissioner, beginning March 1, 2005, to allow marine dealers to submit applications and documents for vessel registrations to DMV electronically and requires implementing regulations;
15. authorizes the DMV commissioner to determine alternate methods of verifying vehicle identification numbers when this is required by law;
16. increases the fee for original issue drivers' licenses and two-year licenses for those age 65 and over;
17. reduces the license period for commercial drivers' licenses from six to four years and makes related fee changes including an increase in the fee for original licenses;
18. broadens the commissioner's authority to disclose personal information from DMV records for motor vehicle market research activities;
19. eliminates the Uninsured Motor Vehicle Forfeiture Revolving Account and the related process through which the state's attorney petitions the Superior Court to order a

forfeiture sale of a motor vehicle impounded by police for operating while its registration has been cancelled for failure to maintain required insurance;

20. defines a major loss of utility service for purposes of the exemption from state and federal maximum hours of driving and on-duty time for drivers of utility company vehicles providing emergency relief;
21. requires motor vehicle repair customers to request the return of replaced parts and equipment when they authorize the repair work rather than at any point up to the time the vehicle is returned to them;
22. establishes requirements for new and used car dealers who offer optional component-part-marking services to vehicle purchasers with respect to specifying the charges on the sales order, filing charges for such services with the commissioner, charging only the filed rates, and related procedures;
23. eliminates the commissioner's authority to require deposits from applicants for temporary registrations and makes related changes;
24. expands and clarifies requirements for certain fee waivers for active duty members of the armed forces;
25. authorizes licensed advanced practice registered nurses to provide the certification necessary for certain people to get handicapped parking credentials from DMV; and
26. makes technical changes.

EFFECTIVE DATE: July 1, 2004, except for the provisions on windshield stickers for emissions testing-exempt vehicles, pickup truck registration (but not the definition), motor vehicle racing events and exhibitions, clarification of the application of the fee for driver history records, and elimination of the uninsured motor vehicle forfeiture revolving account and forfeiture sale process, which are effective upon passage and the provisions on the \$5 fine assessment and elimination of references to vehicle immobilization devices and the public safety commissioner's responsibility for regulations for the approval, calibration, and maintenance of interlock devices, which are effective October 1, 2004.

IGNITION INTERLOCK AND RELATED REQUIREMENTS FOR CERTAIN DRUNK DRIVING OFFENDERS

By law, someone who is convicted for a second time within a 10-year period for driving while under the influence of alcohol, drugs, or both is subject to a fine, term of imprisonment, including a minimum mandatory term, community service, and a driver's license

suspension of three years, or until age 21, whichever is longer. But if the conviction is based on driving under the influence of alcohol or with an illegal blood-alcohol content (.08% or .02% if under age 21) the license suspension may be for one year followed by a two-year period during which the offender may operate a vehicle only if it is equipped with a functioning, approved ignition interlock device. Such devices require the driver to provide a breath sample before the vehicle can be started and may periodically require other samples while the vehicle is in use.

The act establishes the conditions for the DMV commissioner to permit the use of ignition interlocks when such a sanction has been imposed. It requires the commissioner to permit someone to operate a vehicle if he has served at least one year of the license suspension and has installed an approved interlock device in each vehicle he owns or will operate. The requirements apply to anyone whose license has been suspended under the interlock provisions of the drunk driving law beginning September 1, 2003. The act makes anyone whose license has been suspended by the commissioner for any other reason, or who has not either enrolled in a treatment program as required by law or gotten a waiver from this requirement as the law provides, ineligible to operate an interlock-equipped vehicle.

If the commissioner determines that any person whose license has been suspended for operating under the influence of alcohol or drugs may have a condition that renders him incapable of safely operating a vehicle, the commissioner may require him to operate only an interlock-equipped vehicle for any period he determines as a condition of license reinstatement.

The act requires the person required to use the ignition interlock device to pay all costs of installing and maintaining any such device the commissioner orders under the act's provisions. It eliminates the public safety commissioner's responsibility to adopt regulations governing approval, proper calibration, and maintenance of interlock devices. Instead, it makes the motor vehicle commissioner responsible for regulations on these and other matters relating to the interlock requirements. The regulations must also cover installation of the devices by firms the commissioner approves and authorizes to do so.

The act expands to interlocks ordered by the commissioner under the act's provisions existing prohibitions relating to court-ordered interlocks that make it a class C misdemeanor (see the Table on Penalties) for someone to (1) solicit another person to blow into an interlock device; (2) start an interlock-equipped vehicle for the person who is subject to its use; (3) operate a vehicle not equipped with an interlock device when such a device is required; or (4) tamper, alter, or bypass an interlock device for the purpose of

giving the person subject to a use requirement an operable vehicle.

The act specifies that its requirements may not be construed to allow the continued operation of an interlock-equipped vehicle by anyone whose license or nonresident operating privilege has been withdrawn, suspended, or revoked.

The act removes all references to the use of vehicle immobilization devices as an alternative to imposition of ignition interlock devices. An immobilization device is anything installed on a vehicle that physically or mechanically prevents it from being operated.

SPECIAL INTEREST LICENSE PLATE PROGRAM

The act makes the special interest license plate program discretionary with the commissioner rather than mandatory. It also authorizes the commissioner to discontinue issuing special plates (1) for qualified organizations or (2) issued under certain legislatively mandated plate programs if, in his opinion, the demand for the plates is insufficient to support production costs. He must provide written notice to the qualified organization of his intent to discontinue the special plate.

The legislatively mandated special plates subject to discontinuation under the act include Keep Kids Safe, Animal Population Control, Greenways, Amistad, Olympic Spirit, and United We Stand. The authority also applies to plates issued for state and municipal police officers and other employees killed in the line of duty.

The special interest plate program covers collegiate plates and plates requested by nonprofit organizations and institutions meeting certain qualifications established by regulation. DMV regulations establish a minimum threshold of 200 applications before it will issue a special plate, and set requirements for continuing requests.

SANCTIONS FOR FAILURE TO COMPLY WITH EMISSIONS INSPECTION REQUIREMENTS

The act authorizes the DMV commissioner to suspend or revoke the registration of any vehicle owner who fails to pay any fee required under the motor vehicle emissions inspection law. By law, vehicle owners must pay a \$20 fee for an inspection and another \$20 fee if they are more than 30 days late for a required inspection. The \$20 inspection fee is collected at the inspection station or else the inspection is not conducted. The late fee must be paid to the DMV. The act, in effect, authorizes the commissioner to move against the vehicle registration if the owner fails to pay the late fee. It also gives him explicit authority to

revoke, as well as suspend, a registration for noncompliance with inspection requirements.

MOTOR VEHICLE RACING EVENTS AND EXHIBITIONS

The act eliminates DMV oversight of motor vehicle racing events and exhibitions as well as the requirement that those conducting such races and exhibitions get a permit from DMV. It eliminates DMV's authority to regulate the conditions under which races or exhibits may be conducted. It statutorily requires the event operator to provide for first aid and medical supplies, including ambulances, and the attendance of doctors or others qualified to give emergency medical aid, police and fire protection, and other requirements to eliminate unusual hazards to participants and spectators. (These requirements are in DMV regulations.) The act requires DMV to issue regulations governing mandatory safety equipment for vehicles that participate in races or exhibitions and any equipment necessary to protect drivers.

The act requires every facility where racing is conducted to have restricted areas posted with notices that only those with appropriate credentials may enter. These restricted areas must include, at least, the pit area and pit lane, track, media area, and any other area unprotected from participating vehicles. The act prohibits smoking or carrying lit smoking implements in any area where fuel is stored or transferred. Finally, it makes the person conducting the race or event, rather than the DMV commissioner, responsible for either canceling or postponing the event or requiring the use of tires made for adverse conditions when weather or track conditions make it unusually hazardous.

SECOND-YEAR REGISTRATION REFUNDS

Previously, the commissioner had to refund one-half of the registration fee for any passenger, all-terrain, combination, early American, farm, handicapped, motorcycle, snowmobile, and vanpool registration when the license plates and registration certificate was returned with one year or more remaining before registration expiration. The act broadens the refund requirement to include all vehicles, regardless of registration classification, if the plates and registration certificate are returned with a year or more remaining.

CONSTRUCTION EQUIPMENT AUCTIONS

The act exempts certain entities primarily engaged in the business of conducting auction sales of construction equipment and other special mobile equipment from licensure requirements as new or used motor vehicle dealers and from permit requirements for

conducting the auctions. The exemption applies if the entity primarily engages in auctions of construction equipment and other special mobile equipment and incidentally engages in auction sales of trailers or other motor vehicles at a fixed location and place of business in Connecticut and was engaged in the business at that location on or before January 1, 2004. If the entity accepts motor vehicles on consignment from a licensed dealer and the vehicles are offered for public sale, the consigning dealer must obtain a permit for the auction and is responsible for compliance with the state's used motor vehicle warranty requirements.

The act makes violations of the motor vehicle auction licensing and permit law a class B misdemeanor (see Table on Penalties), instead of only a civil penalty of \$2,000, but it retains the civil penalty for failing to sell totaled or salvaged vehicles with "Salvage Parts Only" title stamps in an area separated from the other vehicles.

The act also subjects anyone who conducts an auction sale in accordance with the law to the requirements and penalties of laws prohibiting the operation of stolen vehicle "chop shops" and the buying or selling of motor vehicles, construction equipment, agricultural tractors, or farm implements with mutilated, altered, or removed vehicle identification numbers, factory or engine numbers, or numbers that show evidence of tampering.

FILING OF CERTIFICATE OF FINANCIAL RESPONSIBILITY

The act eliminates the specific requirement that someone file a certificate of financial responsibility with the DMV commissioner following violations involving reckless driving; evading responsibility or motor vehicle racing; or driving while under the influence of alcohol, drugs, or both or if he has been found criminally responsible in connection with a fatal accident. The requirement also applied when someone was convicted of the specific offenses, forfeited bond, or received a suspended judgment or sentence. The filing was required for someone to receive or retain a driver's license or registration or for restoration of a suspended registration. But the act retains the commissioner's general authority to require evidence of financial responsibility whenever he believes a person's record requires it for the reasonable protection of others.

TRAUMATIC BRAIN INJURY FINE ASSESSMENT

The act imposes a \$5 assessment on the fine required for anyone who is convicted of, or forfeits an appearance bond for, speeding; reckless driving; or driving under the influence of alcohol, drugs, or both; or who pleads nolo contendere to a speeding violation and

mails in the fine. The assessment for speeding applies to statutory speeding, i.e., driving at a speed that endangers the life of a vehicle occupant or that is above 55 or 65 miles per hour on roads so posted, but not for traveling unreasonably fast (driving faster than is reasonable for the road and traffic conditions). The assessment must be in addition to all other surcharges, fees, and assessments that apply to the violation.

The \$5 assessment must be deposited in the General Fund and credited to the Brain Injury Prevention and Services Account that the act establishes as a separate, nonlapsing General Fund account. The account must retain any investment earnings from the money deposited in it. Money in the account must be allocated to the Department of Social Services for grants to the Brain Injury Association of Connecticut. Balances in the account at the end of the fiscal year carry forward to the succeeding year.

CIVIL PENALTY FOR DEFECTIVE EQUIPMENT WARNINGS

The act eliminates the \$50 civil penalty the commissioner could impose on anyone who received a defective equipment warning from a police officer and did not provide the commissioner with the copy of the form that provides evidence that his vehicle was repaired and inspected for compliance. It also eliminates mandatory suspension of the vehicle registration when the owner fails to pay the penalty within the prescribed time. Instead, unless the registration is cancelled, it allows the commissioner to suspend the person's privilege to register any vehicle or to operate any vehicle in Connecticut that is registered elsewhere until the vehicle subject to the warning is restored to safe operating condition.

PICKUP TRUCKS

The act defines a pickup truck as a motor vehicle with a gross vehicle weight rating (GVWR) of less than 10,000 pounds and with an enclosed forward passenger compartment and an open rearward compartment used for transporting property. It allows the commissioner to issue a passenger, rather than a combination, registration to any pickup truck that is not used for commercial purposes and has a GVWR of 8,500 pounds or less. A pickup truck not used for commercial purposes with a GVWR over 8,500 pounds and any pickup truck used for both private passenger and commercial purposes must be issued a combination registration.

VERIFICATION OF VEHICLE IDENTIFICATION NUMBERS

By law, the DMV commissioner must verify the vehicle identification numbers of all used vehicles being registered and titled for the first time in Connecticut. Previously, this had to occur by inspection at the time of registration. The act allows the verification to be conducted by any means acceptable to the commissioner, thus allowing such verifications to be done, for example, through computer checks.

ORIGINAL DRIVER'S LICENSE FEE AND TWO-YEAR LICENSE FEE FOR SENIORS

The act increases the fee for original drivers' licenses, which are frequently issued for irregular periods to correlate the license period with the applicant's birthday. PA 04-4 increased the fee from \$1 per month with a maximum of \$4 for any six-month period, plus the sum of \$5.25, to \$43 for a four-year license, \$65 for a six-year license, and \$11 per year or any part of a year. This act increases these amounts to \$44 for a four-year license and \$66 for a six-year license.

PA 04-4 increased the license fee for the two-year license someone age 65 or older may request from \$19 to \$21. This act increases the fee from \$21 to \$22.

COMMERCIAL DRIVERS' LICENSES

The act reduces the license period for commercial drivers' licenses from six years to four years and reduces the renewal fees by one-third, from \$90 to \$60 to reflect the shorter license period. It raises the fee for original-issue commercial drivers' licenses from \$1.25 per month with a maximum of \$5.50 for any six-month period, plus the sum of \$9, to a flat fee of \$15 per year or any part of a year. (For example, under the act, the fee for a four-year original license would increase from \$53 to \$60.)

DISCLOSURE OF INFORMATION FROM DMV FILES

The act allows the commissioner to disclose personal information from DMV records for motor vehicle market research activities, including survey research and motor vehicle product and service communications, in order to comply with or implement certain federal laws as long as it does not violate a restriction against such information being published, disclosed, or used to contact individuals. It also allows disclosure of such information for producing statistical reports subject to the same restriction.

ELIMINATION OF UNINSURED MOTOR VEHICLE FORFEITURE REVOLVING ACCOUNT

The act eliminates the Uninsured Motor Vehicle Forfeiture Revolving Account. By law, a police officer may seize and impound a vehicle if DMV has cancelled its registration for failure to maintain required levels of insurance and the officer sees the vehicle being operated. Previously, if the vehicle was not claimed within 45 days, the state's attorney could petition the Superior Court to order a forfeiture sale of the vehicle. The sale proceeds were then used to cover the storage costs, court costs, and pay off any lien on the vehicle. Any balance had to be deposited in the Uninsured Motor Vehicle Forfeiture Revolving Account.

The act retains the authority for police officers to impound a vehicle observed operating with a cancelled registration, but eliminates the rest of the forfeiture sale process.

DEFINITION OF MAJOR UTILITY SERVICE LOSS FOR HOURS OF SERVICE EXEMPTION

By law, drivers of utility company vehicles with commercial registrations are exempt from state and federal restrictions on their maximum hours of driving and on-duty time when transporting people or property to provide emergency relief or assistance in the case of a major loss of utility service, a disaster, or other state of emergency declared by the governor. The act defines a major loss of utility service for purposes of this exemption as any unplanned outage or interruption, or the imminent risk of outage or interruption, of electric, gas, or telephone service, or of service to electric transmission or distribution lines, gas distribution or transmission facilities, electric generation facilities, or other related facilities, or any circumstances related to utility service under which the public safety is at risk, including, at least, any situation where police, fire, or other public safety personnel have requested a response by an electric, gas, or telephone company to an accident or other situation that presents a hazard to the public.

The act specifies that a major loss of service begins when the public service company receives notice of the outage, interruption, or hazard or of the existence of conditions reasonably likely to result in such events, and continues until any necessary maintenance or repair is completed and the personnel used to make them have returned to their regular work routines.

RETURN OF REPLACED PARTS BY MOTOR VEHICLE REPAIRERS

By law, a motor vehicle repairer must make all replaced parts, components, or equipment available to a customer who requests them. The act requires the

customer to make such a request when he makes his written or oral authorization for performance of the repair work rather than at any time before or when his vehicle is returned to him.

COMPONENT PART MARKING SERVICES

The act requires any new or used car dealer who offers, at the time of sale, the optional service of marking the vehicle's component parts with the complete vehicle identification number to specify the charge for the service separately on the sale order pursuant to statutory requirements for providing information on motor vehicle sales orders and invoices. It authorizes the commissioner to adopt regulations providing standards for secure component part marking and for telephone or on-line access to a secure database of vehicles and parts that have been so marked and registered in the database. The regulations may also provide for motor vehicle repairers marking parts used to replace marked parts.

The act requires dealers to make reasonable charges for parts-marking services and file them with the commissioner by September 1 annually and allows dealers to amend them from time to time. It prohibits dealers from charging more than the filed rate.

TEMPORARY REGISTRATIONS

The act eliminates the commissioner's authority to require an applicant for a temporary vehicle registration to provide a deposit equal to the cost of registering the vehicle. It also makes it clear that the fees charged for temporary registrations must be the ones already specified by law and that the commissioner may determine the duration of a temporary registration.

LICENSE AND REGISTRATION FEE WAIVERS FOR ACTIVE MILITARY

The act requires the commissioner to waive motor vehicle registration fees, including renewal fees, for anyone in active service in the U.S. armed forces if the person was a legal Connecticut resident at the time of induction. It also makes it clear that the driver's license renewal fee must also be waived for such people, but it appears to eliminate the waiver requirement for the license examination fee. Prior law required waiver of the operator's license fee and license examination fee for someone in active service who was a Connecticut resident at the time of induction and for one licensing period for anyone honorably separated from such service who applied within two years following his service separation and was a legal resident at the time of his induction.

The act authorizes the commissioner to adopt implementing regulations.

CERTIFICATION OF HANDICAPPED PARKING CREDENTIALS BY CERTAIN NURSES

The act authorizes licensed advanced practice registered nurses to certify qualifying physical disabilities for purposes of someone receiving handicapped parking credentials issued by DMV. Previously, only licensed physicians could make such certifications (or ophthalmologists or optometrists in the case of blindness). A member of DMV's handicapped driver training unit may also certify disabilities that limit or impair walking ability.

BACKGROUND

Related Acts

PA 04-182 also gives the commissioner the authority to suspend or revoke someone's motor vehicle registration if he fails to pay any fee required under the motor vehicle emissions inspection law. It also increases the fees for temporary motor vehicle registrations.

PA 04-177 also increases the fee for an original drivers license to \$44 for a four-year license and \$66 for a six-year license.

PA 04-217 also makes commercial drivers' licenses valid for four rather than six years and makes a number of other significant changes to the commercial drivers' license laws, but does not change the fees for these licenses.

PA 04-4 increased the fee for original issue drivers' licenses to \$43 for a four-year license, \$65 for a six-year license, and \$11 per year or part of a year. It also increased the fee for a two-year license issued to someone age 65 or older from \$19 to \$21.

PA 04-217—sSB 28

Transportation Committee

Finance, Revenue and Bonding Committee

Education Committee

Judiciary Committee

AN ACT CONCERNING COMPLIANCE WITH THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT

SUMMARY: The act makes numerous changes to the laws governing issuing, qualifying for, and holding a commercial driver's license (CDL). Many of these changes are required to comply with provisions of the federal Motor Carrier Safety Improvement Act of 1999

with which the state must be in substantial compliance by September 30, 2005. It also makes changes to laws regarding drivers of vehicles transporting hazardous materials that are required by provisions of the USA Patriot Act. The act makes several additional changes that are not required for compliance with these laws. Generally, the changes deal with license classifications and endorsements, disqualification, exceptions and waivers, administrative procedures for issuing CDLs, penalties for violating certain prohibitions on CDL holders and their employers, and several related areas. It also modifies certain provisions of the laws authorizing the motor vehicle commissioner to participate in the multi-state Driver License Agreement. Specifically, it:

1. revises the license classification system to create four instead of two license classes;
2. revises the endorsements that allow CDL holders to drive certain specialized vehicles;
3. exempts from the requirement to hold a CDL, military personnel who operate commercial motor vehicles solely in connection with their military duties in accordance with federal regulations;
4. modifies the endorsement necessary for driving a school bus and creates three new endorsements related to the school bus endorsement, including one for school-related activity vehicles;
5. expands the definition of a school bus to include a commercial motor vehicle, except a bus used by a common carrier, used to transport preschool, elementary school, or secondary school students between home and school or to and from school-sponsored events;
6. authorizes the motor vehicle commissioner to waive the skills test for an applicant for a school bus endorsement who meets federal waiver requirements;
7. requires an applicant for renewal of a CDL that allows him to transport passengers in a commercial motor vehicle to present the commissioner with evidence that he is in compliance with federal medical qualification requirements;
8. applies new federal requirements for background checks for drivers of vehicles carrying hazardous materials, and makes related changes;
9. authorizes the commissioner to disqualify a CDL holder under certain circumstances when he receives a notice of threat assessment from the federal Transportation Security Administration;
10. requires the commissioner to request information from two federal databases before issuing a driver's license that is not a CDL and requires the required inquiry for a CDL to cover the preceding 10, instead of five, years;
11. requires CDL renewals to be for four rather than six years and requires applicants for renewal for the first time, beginning January 1, 2005, to provide the names of all states in which they have been licensed previously;
12. establishes additional grounds for disqualifying a CDL holder from driving a commercial motor vehicle for certain periods;
13. establishes an additional disqualification based on a federal finding that a CDL holder's driving constitutes an imminent hazard to the public;
14. applies the lifetime disqualification of a CDL holder for the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance while using any type of motor vehicle rather than just a commercial motor vehicle;
15. requires notification of disqualification, suspension, cancellation, or revocation to a CDL holder to identify the violation that is the basis of the action;
16. requires the commissioner to notify the state of licensure when he receives a court report of a driver licensed in another state being convicted of violating a Connecticut traffic control law;
17. expands requirements for drivers of certain types of vehicles to stop at rail-highway grade crossings and proceed across the crossing only under certain circumstances to reflect federal requirements;
18. increases the civil penalty for an employer who knowingly permits or requires a driver to operate a commercial motor vehicle while he is subject to an out-of-service order from \$2,500 to \$10,000 to \$2,750 to \$11,000;
19. increases the civil penalty for a commercial vehicle driver who violates an out-of-service order from \$1,000 to \$2,500 to \$1,100 to \$2,750;
20. makes the pretrial alcohol education program unavailable to those charged with a violation of driving while under the influence of alcohol, drugs, or both if the person was driving a commercial motor vehicle;
21. in any case where the commissioner is authorized or required by law to suspend a motor vehicle registration, authorizes him to also suspend, for the same period, the person's privilege to transfer the suspended registration, register any other vehicle, or, if a nonresident, operate any vehicle in Connecticut;

22. modifies statutory provisions governing the Department of Motor Vehicle's (DMV) participation in the multi-state Driver License Agreement, mainly to incorporate new pact requirements relating to procedures involving issuance of non-driver photo identification cards; and

23. makes technical changes.

EFFECTIVE DATE: January 1, 2005, except for the provisions relating to the Driver License Agreement, renewing CDLs for four instead of six years, and the commissioner's authority to suspend, commensurate with a registration suspension, someone's ability to transfer a suspended registration or register other vehicles, which are effective on July 1, 2004

LICENSE CLASSIFICATIONS AND ENDORSEMENTS

License Classifications

The act redefines Connecticut drivers' license classifications and modifies the endorsements that authorize driving of certain special vehicles. Previously, Connecticut licenses were one of two types—class 1 or class 2. A CDL was a class 1 license with one of three sub-classifications—class A for driving any combination of vehicles with a gross vehicle weight rating (GVWR) above 26,000 pounds when the GVWR of any towed vehicle exceeds 10,000 pounds; class B for driving any single vehicle with a GVWR over 26,000 pounds and a towed vehicle with a GVWR of 10,000 pounds or less; and class C for driving a single vehicle meeting neither of the definitions above but (1) designed to transport 16 or more passengers including the driver, (2) designed to transport 11 or more passengers including the driver and used to transport students under age 21 to and from school, or (3) a vehicle that must display placards for carrying hazardous materials. Most people in Connecticut had a class 2 license allowing them to drive any motor vehicle except a commercial motor vehicle, an articulated vehicle, or any other combination of vehicle and trailer where the gross weight of the trailing unit is more than 10,000 pounds (except if it is a camping or recreational trailer).

Under the act, the class 1 and 2 system is replaced by (1) CDLs, which are designated as either class A, B, or C based on the same distinctions as under the prior law and (2) a class D license for all other vehicle operators. Someone with a class D license may drive certain vehicles that he could not drive with the prior class 2 license, e.g. vehicles with GVWR between 10,000 and 26,000 pounds that do not meet the passenger or hazardous materials carrying specifications making them commercial motor vehicles.

CDL Endorsements

Previously, licenses could have one or more endorsements or restrictions. These applied primarily to CDLs and were necessary for driving special types of vehicles. The endorsements previously authorized by statute were "H" for driving hazardous materials (hazmat); "T" for driving double or triple trailers and saddle-mounted vehicles in drive-away service; "P" for commercial vehicles carrying passengers; "S" for commercial vehicles carrying passengers, including school buses; "N" for driving tank vehicles; and "X" for driving tank vehicles carrying hazardous materials. The law also authorized two types of restrictions—"L" which restricted the driver to vehicles that do not have air brakes and "Z" which restricted the driver to school buses only.

DMV also issues a number of other license restriction codes under the commissioner's broad statutory authority but that are not explicitly mentioned by statute. These cover things like corrective lenses, mechanical or prosthetic aids, hearing aids, automatic transmission vehicles only, limited or daylight only driving, intrastate driving only, no limited access highway driving, and medical waivers, among other things.

The act maintains the H (hazmat), T (multiple trailer), P (passenger), N (tank), and X (tank/hazmat) endorsements but eliminates the L (air brake) and Z (school bus only) restrictions. It redefines the S endorsement for a CDL to allow driving a school bus, student transportation vehicle, activity vehicle, taxicab, motor vehicle in livery service, service bus, and motor bus. It creates three new endorsements that can be made on either a CDL or a class D license. These are the "F" endorsement for transporting passengers in a taxicab, livery vehicle service bus, or motorbus; an "A" endorsement for transporting passengers in an activity vehicle or in any F endorsement vehicle; and a "V" endorsement for transporting passengers in a student transportation vehicle or in any A or F endorsement vehicle.

The act defines an "activity vehicle" as a student transportation vehicle that is used to transport students in connection with school-sponsored events and activities but is not used to transport them to and from school. (The act defines an activity vehicle as a student transportation vehicle used to transport students in connection with school-sponsored events and activities, but not to and from school. Presumably, this means between home and school since it is likely that most transportation for school-sponsored activities would probably be done to and from school.) By law, a "student transportation vehicle" is any vehicle other than a registered school bus that a carrier uses to transport students, including special education students.

A carrier can be (1) a local or regional school district, any elementary or secondary educational institution, or any entity under contract to a district or school in the business of transporting school children; (2) any entity providing transportation for compensation exclusively to anyone under age 21; or (3) any corporation, institution, or nonprofit organization providing transportation as an ancillary service primarily to those under age 18.

The act authorizes the commissioner to establish restrictions for any class of CDL by regulation.

School Bus Endorsement

The act requires the DMV regulations regarding the inspection, registration, operation, and maintenance of school buses and the licensing of school bus drivers to incorporate federal regulatory requirements regarding the qualifications for applicants for a school bus endorsement. The federal criteria include: (1) qualification for a passenger vehicle endorsement based on passage of the knowledge and skills test; (2) knowledge covering at least (a) loading and unloading children, including safe operation of stop signals, external mirror systems, and flashing light and other passenger safety devices required by federal law or regulation; (b) emergency exits and evacuation procedures, and (c) state and federal laws on safely traversing rail-highway grade crossings; and (3) passage of a skills test in a school bus of the same type as the applicant will be driving.

The act allows the commissioner to waive the skills test if the applicant meets the requirements for a waiver under federal regulation. These specify that the state may waive the skills test if the applicant is currently licensed, has experience driving a school bus, and has a good driving record. The applicant must also certify that in the two years immediately before applying for the school bus endorsement he:

1. held a valid CDL with a passenger endorsement to operate a school bus representative of the group he will be driving;
2. has not had his driver's license or CDL suspended, revoked, or cancelled or been disqualified from driving a commercial motor vehicle;
3. has not been convicted of any disqualifying offenses while operating a commercial motor vehicle or of any offense while operating any other type of vehicle that would be disqualifying if it had occurred in a commercial motor vehicle;
4. has not had more than one conviction for a serious traffic violation while operating any type of motor vehicle;

5. has not been convicted for a violation of state or local traffic control law other than a parking violation arising in connection with a traffic accident or any traffic violation that resulted in an accident; and
6. has been regularly employed as a school bus driver, has operated a bus representative of the group he wants to drive, and provides evidence of such employment.

However, the regulation specifies that these provisions do not apply after September 30, 2005.

Evidence of Medical Qualification

The act requires an applicant for renewal of a CDL that allows him to transport passengers in a commercial motor vehicle to present the commissioner with evidence that he is in compliance with the medical qualifications established under federal regulation. These regulations specify that the person must have the original or a photographic copy of a medical examiner's certificate that he is physically qualified to drive the commercial motor vehicle. Under the regulations, someone is physically qualified to drive such a commercial motor vehicle if he:

1. has not lost any limbs or has been granted a skill performance evaluation certificate under other federal requirements;
2. has no hand or finger impairment that interferes with prehension or power grasping or of an arm, foot, or leg that interferes with the ability to perform tasks associated with driving such a vehicle;
3. has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;
4. has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;
5. has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to drive the vehicle safely;
6. has no current clinical diagnosis of high blood pressure likely to interfere with his ability to drive the vehicle safely;
7. has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease that interferes with his ability to control and operate the vehicle safely;
8. has no established medical history or clinical diagnosis of epilepsy or any other condition

- that is likely to cause loss of consciousness or loss of ability to control a commercial motor vehicle;
9. has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive the vehicle safely;
 10. has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or separately corrected to that level or better with corrective lenses, distant binocular acuity of at least 20/40 in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye; and the ability to recognize colors of standard traffic signals;
 11. first perceives a forced whisper in the better ear at not less than five feet with or without a hearing aid or, if tested with an audiometric device calibrated to a specific national standard, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid;
 12. does not use a Schedule I controlled substance, an amphetamine, narcotic, or other habit forming drug unless prescribed by a licensed medical practitioner who both knows the driver's medical history and assigned duties and has advised the driver that it will not adversely affect his ability to safely operate the vehicle; and
 13. has no current clinical diagnosis of alcoholism.

Hazardous Materials Endorsement

The act subjects applicants for a hazardous materials endorsement to a federal law requiring background checks of relevant databases with respect to (1) criminal history; (2) in the case of an alien, to determine his status under the U.S. immigration laws; and (3) international checks through Interpol-U.S. National Central Bureau. Under this law, the state must provide the U.S. transportation secretary with the name, address, and any other information he requires for each person to whom the state issues a license to transport hazardous materials. For these purposes, hazardous materials also include any chemical or biological material the federal health and human services secretary or attorney general determines to be a threat to national security.

The act authorizes the motor vehicle commissioner to refuse to issue, or to suspend or revoke the hazardous materials endorsement of anyone for whom he receives a Final Notice of Threat Assessment from the U.S. Transportation Security Administration in accordance

with federal regulations. Under these regulations, the federal agency makes a determination based on several criteria whether the person represents a security threat and notifies the state either positively or negatively.

LICENSE ISSUING PROCEDURES

Before issuing a non-CDL driver's license, the act requires the commissioner to request information from the National Driver Registry (NDR) and the Commercial Driver License Information System (CDLIS) in accordance with federal regulations and note on each driving history the date on which the inquiry was made. The CDLIS check must determine whether the person has been issued a CDL; whether his CDL has been suspended, revoked, or cancelled; or if he is disqualified from operating a commercial motor vehicle. The NDR check must determine if the person has been disqualified from driving a motor vehicle other than a commercial motor vehicle; has had a non-CDL license suspended, revoked, or cancelled for cause in the three-year period prior to the date of application; or has been convicted of (1) operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance, (2) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highway, (3) failure to render aid or provide identification when involved in an accident that results in injury or fatality, or (4) perjury or the knowledgeable making of a false statement or affidavit to officials in connection with activities governed by law or regulation relating to operation of a motor vehicle.

For CDLs, the act requires the currently required CDLIS and NDR check to identify each state in which the person has been licensed in the preceding 10 instead of five years.

The act requires the application for a CDL or CDL instruction permit to include the applicant's identification of all states in which he has been licensed to drive any type of motor vehicle during the last 10 years and his sworn statement that he does not hold an operator's license in any other state.

CDL RENEWALS

The act requires CDLs to be renewed for four rather than six years. Beginning January 1, 2005, each applicant must, when renewing his CDL for the first time, provide the names of all states in which he has ever been issued a motor vehicle operator's license. If during the preceding 10 years he has held a license in another state, the commissioner must request the driving history record from that state. If the commissioner receives a driving history request from another state

regarding a CDL holder, he must provide the record within 30 days as required by federal regulation.

GROUND FOR DISQUALIFICATION FROM DRIVING A COMMERCIAL MOTOR VEHICLE

One-Year Disqualification

Previously, a CDL holder was disqualified from driving a commercial motor vehicle for one year if he was convicted of one violation of (1) driving any motor vehicle (not only a commercial motor vehicle) while under the influence of alcohol, drugs, or both; (2) evading responsibility following an accident when it involved a commercial motor vehicle; or (3) using a commercial motor vehicle in the commission of a felony. The act expands the last disqualification to include use of any motor vehicle, not only a commercial motor vehicle, in the commission of a felony. It also adds one-year disqualifications for one conviction of (1) driving a commercial motor vehicle while a CDL is revoked, suspended, or cancelled, or while disqualified from driving such a vehicle or (2) causing a fatality through negligent or reckless operation of a commercial motor vehicle as evidenced by conviction of negligent homicide with a motor vehicle, manslaughter in the second degree with a motor vehicle, misconduct with a motor vehicle, or assault in the second degree with a motor vehicle.

The act expands the prior one-year disqualification following a finding by the commissioner that a CDL holder has either refused to submit to a BAC test or has taken a test that resulted in a BAC of .04% or more to cover test refusals or .04% test results occurring while operating any motor vehicle, not just a commercial motor vehicle. Thus if a CDL holder is found to have a BAC of .04% or more while driving something other than a commercial motor vehicle, he would be disqualified from driving a commercial motor vehicle for one year but would not be charged with the criminal offense of driving while under the influence of alcohol unless the BAC was .08% or more. Unlike the other grounds for disqualification the act adds or expands, this one is not required for compliance with the aforementioned federal laws.

The existing three-year rather than one-year disqualification if the offense occurs while driving a vehicle transporting hazardous materials requiring placards under federal law would apply to the act's expanded list of offenses as well.

Disqualification for Serious Traffic Violations

By law, a CDL holder must be disqualified from driving a commercial motor vehicle for at least 60 days if convicted of two serious traffic violations, or 120

days if convicted of three serious traffic violations, committed in a commercial motor vehicle, arising from separate incidents occurring within a three-year period. Previously, serious traffic violations included convictions for (1) traveling unreasonably fast or speeding, if the speed was 15 miles per hour or more above the posted speed limit; (2) reckless driving; (3) following too closely or following too closely with intent to harass or intimidate; (4) improper lane changes or passing on multiple lane highways; or (5) any conviction arising in connection with an accident related to operation of a commercial motor vehicle that resulted in a fatality.

The act expands this provision to apply to offenses committed while driving any type of vehicle. It also includes driving a commercial motor vehicle without a valid CDL, failing to carry a CDL, and failure to have a proper class of license or endorsement.

Disqualification Based on Driving Constituting an Imminent Hazard

The act requires any CDL holder whose driving is determined by the Federal Motor Carrier Safety Administration (FMCSA) to constitute an imminent hazard to be disqualified from driving a commercial motor vehicle for up to 30 days unless the commissioner is satisfied that FMCSA has complied with the review and hearing procedures set out in federal regulation. The act adopts the federal regulatory definition of "imminent hazard" as the existence of a condition that presents the substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of the death, illness, injury, or endangerment.

The procedures with which FMCSA must comply allow it to provide an opportunity for a hearing after issuing a disqualification for 30 days or less. FMCSA must provide the driver with notice of a disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. The driver may appeal his disqualification administratively within FMCSA. Disqualifications can be up to one year long.

NOTIFICATION OF OTHER STATES OF OFFENSES OCCURRING IN CONNECTICUT

The act requires the commissioner to notify the state of licensure within 30 days when he has been notified by the centralized infractions bureau or any Superior Court clerk that someone holding (1) a CDL issued by another state is convicted of violating any Connecticut law relating to traffic control or (2) an

operator's license issued by another state is convicted of violating a traffic control law while operating a commercial motor vehicle. Beginning September 30, 2008, this notice must be made within 10 rather than 30 days of the conviction.

REQUIREMENTS FOR STOPPING AT RAIL-HIGHWAY GRADE CROSSINGS

Previously, the driver of a commercial motor vehicle carrying passengers, a service bus, any vehicle used to transport school children, and a commercial motor vehicle carrying hazardous materials had to stop his vehicle between 10 and 50 feet from the nearest rail at a rail-highway grade crossing; check in both directions for approaching trains before crossing the track; and in no event cross the track when warned by automatic signal, crossing gates, a flagman, or otherwise of the approach of a train. The act requires drivers to obey a law enforcement officer's warning not to cross. The act increases the minimum stopping distance from 10 to 15 feet from the nearest track and adds commercial motor vehicles with cargo tanks to the types of vehicle that must stop.

The act requires a driver to be disqualified from driving a commercial motor vehicle for 60 days if convicted of failing to stop at a railroad grade crossing as required by law, for 120 days for a second such conviction, and for one year for a third or subsequent conviction within a three-year period.

The act also prohibits the driver from attempting to cross the grade crossing if his vehicle cannot be driven completely through the crossing without shifting gears on account of its width or the clearance of its undercarriage. It authorizes the commissioner to adopt regulations to implement these requirements, including the exemptions that apply for certain crossings in federal regulations. These generally include exemptions for (1) streetcar crossings, or tracks used exclusively for industrial switching purposes, within a business district; (2) crossings where a police officer or crossing flagman directs traffic to proceed; (3) a crossing controlled by a functioning traffic signal showing a green indication that, under local law, allows the driver to proceed without slowing or stopping; (4) an abandoned crossing that is marked with an appropriate sign; and (5) an industrial spur line crossing with a sign reading "Exempt" that has been erected by appropriate governmental authority.

DRIVER LICENSE AGREEMENT

By law, the commissioner is authorized to participate in the Drivers License Agreement (DLA), a multi-state compact administered by the American Association of Motor Vehicle Administrators. Under

the DLA, all participating states must have one driver's license that is recognized by all other member states and maintain one driver history. Member states exchange various types of information and take appropriate licensing actions that take drivers' actions in other jurisdictions into account in their home state.

The act requires the commissioner to (1) verify the identity of an applicant for a driver's license or nondriver photo identification card in accordance with DLA procedures and requires the commissioner to set these out by regulation and (2) follow the same procedures when issuing nondriver photo identification cards that he does for issuing drivers' licenses. If he issues an identification card to someone who holds a driver's license from another DLA jurisdiction, he must report within 30 days the person's name and any other information on the person or identification card that the DLA requires and he has set out in the required regulations.

The act also adds two provisions to the general declarations for participation in the DLA that generally reflect recent changes to the DLA. Specifically, these include statements that (1) efforts must be made to achieve greater uniformity among members concerning identification and verification requirements for issuing drivers' licenses and nondriver photo identification cards and (2) member jurisdictions wish to adhere to all applicable laws that protect the privacy of personal information that is contained in driver licensing records and that is used in exchanging such records.

PA 04-250—sSB 101

Transportation Committee

Judiciary Committee

Appropriations Committee

AN ACT CONCERNING THE ADMINISTRATIVE LICENSE SUSPENSION OF DRUNKEN DRIVERS AND THE PRETRIAL ALCOHOL EDUCATION SYSTEM

SUMMARY: This act establishes a different administrative driver's license suspension procedure when someone who has been arrested for driving while under the influence of alcohol or drugs (DWI) has (1) been involved in an accident resulting in a fatality or (2) has a prior license suspension for a DWI conviction within the preceding 10 years. It increases the fee from \$100 to \$125 to restore a suspended or revoked license, nonresident right to operate a motor vehicle in Connecticut, or privilege to operate a commercial motor vehicle following a disqualifying offense. It similarly increases the restoration fee for a suspended or revoked vehicle registration or right to operate a vehicle in Connecticut when this is due to any cause except failure

to maintain adequate levels of insurance (for which a significantly higher restoration fee already applies). The act requires the first \$250,000 collected from restoration fees to be appropriated to the Department of Motor Vehicles to pay costs it incurs, including computer reprogramming costs, for establishing the new suspension procedure the act requires.

The act adds physicians' assistants to those who may take blood samples that must by law be obtained from surviving vehicle operators who have been involved in an accident resulting in a death or serious physical injury to another person and who a police officer has probable cause to believe was driving under the influence of alcohol, drugs, or both.

The act also allows someone charged with DWI who has applied for the pretrial alcohol education program to be ordered to complete either an alcohol intervention program or a substance abuse treatment program, depending on the findings of the assessment the law requires before a decision is made on his eligibility.

Finally, the act establishes a penalty for a driver who strikes a police or fire police officer who is engaged in traffic control duties, provided the officer is in uniform or prominently displaying his badge and, if a fire police officer, is complying with statutory requirements governing the clothing, identification, and equipment the officer must use while directing traffic. The act makes a first violation an infraction punishable by a fine of \$150 to \$200 and penalizes subsequent offenses with a fine of up to \$250, imprisonment for up to 30 days, or both.

EFFECTIVE DATE: October 1, 2004, except for the provisions on the restoration fee increase and use of restoration fee revenue, which are effective July 1, 2004.

ADMINISTRATIVE DRIVER'S LICENSE SUSPENSION

By law, when a police officer arrests someone based on the officer's finding that there is probable cause to believe the person has been driving while under the influence of alcohol or drugs, the officer may request that the person submit to a chemical test of his blood, breath, or urine. Before making such a request, the officer must inform the person of his constitutional rights. The person must also be given a reasonable opportunity to telephone an attorney before the test and be informed that his license or nonresident operating privilege may be suspended if he refuses to take the test or the test results indicate an elevated blood-alcohol content (.08% or .02% if under age 21).

Previously, if any person either refused to take the test or the results showed an elevated blood-alcohol level, the police officer, acting on behalf of the motor

vehicle commissioner, immediately revoked and took possession of his driver's license (or suspended his nonresident operating privilege) for 24 hours and sent a written report and the test results to the commissioner within three business days, following certain statutory requirements. Upon receiving the report, the commissioner could suspend the person's license or nonresident operating privilege effective on a date certain that was not more than 30 days from the date the person was arrested. The person had seven days from the date the notice of suspension was mailed to request a hearing on the impending suspension, and the hearing had to be held before the suspension became effective.

The act establishes a different suspension requirement if the arrested person either (1) is involved in an accident resulting in a fatality or (2) has previously had his license or nonresident operating privilege suspended for a DWI offense during the preceding 10 years. The person does not need to have been found at fault with respect to a fatal accident for the requirement to apply.

Under the act, the commissioner may suspend such a person's license or nonresident operating privilege effective on a date specified in the suspension notice. The person has seven days from the date the notice was mailed to request a departmental hearing, and the hearing must be scheduled not more than 30 days after the person contacts the department. Any such suspension must remain in effect until it is affirmed or the license or operating privilege is reinstated according to law.

In effect, in the case of someone involved in a fatal accident or who has a prior suspension due to a previous DWI conviction, the act allows the commissioner to suspend the license or nonresident operating privilege immediately (or at any other date he determines) and then provide the hearing if requested rather than, as under prior law, making the suspension effective 30 days after the arrest with a hearing opportunity before the suspension is effective.

The only issues at any such hearing remain the same in either case. They are whether (1) the officer had probable cause to arrest the person for DWI, (2) the person was arrested, (3) he refused to take the test or the results of the test if given within two hours of operation indicate an elevated blood-alcohol content, and (4) he was operating the vehicle.

PRETRIAL ALCOHOL EDUCATION PROGRAM

By law, someone charged with DWI, operating a vehicle with a blood-alcohol content of .02% or more if under age 21, operating a vessel or waterskiing while under the influence of alcohol or drugs, or reckless operation of a vessel while under the influence of alcohol or drugs, may apply to the court for admission

to the pretrial alcohol education system. The applicant must pay certain fees and make certain affirmations under oath before the court, one being that he has not had the program previously invoked on his behalf within the preceding 10 years. The court can grant the application after considering the recommendations of the state's attorney. It must then refer the person to the Court Support Services Division for assessment and confirmation of eligibility. Upon confirmation of eligibility, the person must be referred by the support services division to the Department of Mental Health and Addiction Services (DMHAS) for placement in an appropriate alcohol intervention program for one year. If the person satisfactorily completes the assigned program, he may apply for dismissal of the charges against him. Upon a finding of satisfactory completion, the court must dismiss the charges.

The act gives the court a second option, allowing it either to refer the defendant to an alcohol intervention program, as under prior law, or place him in a state-licensed substance abuse treatment program consisting of at least 12 sessions. The act requires such state-licensed treatment programs to meet standards established by DMHAS instead of having standards substantially similar to or higher than a provider under

contract with DMHAS. The act makes it clear that someone entering the system must, after completing the intervention program, agree to accept placement in a state-licensed treatment program meeting DMHAS standards upon recommendation of an intervention program provider under contract to DMHAS.

If the court grants the defendant's application for participation in a treatment program, he must pay all program costs. As under the prior law for the alcohol education program, someone cannot be excluded from the treatment program for inability to pay as long as he files an affidavit of indigency or inability to pay with the court, the Court Support Services Division confirms it, and the court finds him indigent. The act requires the treatment costs to be paid from the "pretrial account" (not defined but apparently an account maintained by DMHAS).

As is the case for participation in an intervention program, anyone whose employment or residence makes it unreasonable to attend a treatment program in Connecticut may attend, with the court's approval, a similar program in another state that has standards substantially similar to or higher than Connecticut's.

PA 04-1, May 2004 Special Session—SB 801
Emergency Certification

**AN ACT INCREASING CERTAIN BOND
 AUTHORIZATIONS FOR CAPITAL
 IMPROVEMENTS**

SUMMARY: This act changes total bond authorizations for various programs and purposes, authorizes bonds for FY 2005, and directs how authorized bonds must or may be spent. It allows the Capital City Economic Development Authority (CCEDA) to establish a special capital reserve fund for Hartford convention center bonds with an automatic state appropriation available as a last resort to maintain the minimum fund reserve, extends the deadline for allocating state bonding for various Hartford projects, extends to CCEDA various financial approval requirements already applicable to other state authorities, and expands reporting requirements for the Adriaen's Landing and UConn football stadium projects.

The act establishes pilot and demonstration programs to (1) help hospitals provide medical malpractice insurance to their doctors and (2) provide affordable housing to families whose children have serious, chronic medical conditions.

It expands the functions of the Connecticut Health and Educational Facilities Authority (CHEFA) by allowing it to finance loans for preschool facilities and requiring it to provide hospitals with access to leases for equipment needed to digitize patient records. It allows CHEFA to issue taxable bonds and use a special capital reserve fund to back bonds to finance health care institution equipment purchases. It also makes substantive and technical changes in CHEFA's authority to provide financial assistance, invest its funds, and establish subsidiaries.

The act allows Bridgeport to receive a single grant for several school construction projects and use federal block grant and other funds as its local share for the consolidated project. It adds two Bridgeport projects to the 2004 project authorization list and allows the city to change the scope of a previously authorized project.

Finally, the act gives towns a total of \$30 million in annual credits for FYs 2004 and 2005 under the Local Capital Improvement Program (LOCIP), provides up to \$30 million in economic development assistance for Torrington, and gives Groton an additional Clean Water Fund grant to upgrade its wastewater treatment plant.
 EFFECTIVE DATE: Upon passage or July 1, 2004, as noted below.

BOND AUTHORIZATIONS

The act changes total bond authorizations as shown in Table 1.

Table 1: Changes In Total Authorizations

§	<i>Program/Fund</i>	<i>Prior Law</i>	<i>The Act</i>
1	Urban Action	\$906,987,544	\$982,487,544
	Economic and community development projects (DECD)	74,591,642	67,591,642
	Urban development projects (OPM)	785,300,000	867,800,000
2	Small Town Economic Assistance Program	40,000,000	60,000,000
3	Capital Equipment Purchase Fund	230,000,000	248,000,000
4	Local Capital Improvement Fund	470,000,000	465,000,000
6	School construction projects	3,546,360,000	4,171,860,000
7	School construction interest subsidy grants	198,100,000	231,100,000
8	Clean Water Fund	801,030,000	741,030,000
11	Manufacturing Assistance Act	505,300,000	495,300,000
14	Investment and Loan Guaranty Fund	39,000,000	30,000,000
15	Special Contaminated Property Remediation and Insurance Fund	5,000,000	3,000,000
16	Community Residential Facility Revolving Loan Fund	4,000,000	6,000,000
19	Farmland Preservation Program	87,750,000	89,740,000

The act authorizes bonding for FY 2005 as shown in Table 2.

Table 2: FY 2005 Authorizations

§	<i>Program/Fund</i>	<i>FY 2005 Authorization</i>
1	Urban Action bonds	\$75,500,000
1	Urban development projects	82,500,000
2	Small Town Economic Assistance Program	20,000,000
3	Capital Equipment Purchase Fund	18,000,000
6	School construction grants	625,500,000
7	School construction interest subsidy grants	33,000,000
19	Farmland Preservation Program	2,000,000

EFFECTIVE DATE: July 1, 2004

USE OF BOND REVENUES

Urban Action Bonds (§ 1)

The act allows the Office of Policy and Management (OPM) to use \$10 million of its urban development project authorization for regional economic development revolving loan funds. It also doubles the amount OPM may allocate for library renovations and improvements from \$5 million to \$10 million. (PA 04-2, May Special Session, later increased the authorized library allocation to \$12 million.)

EFFECTIVE DATE: July 1, 2004

Manufacturing Assistance Act Bonds (§ 12)

The act expands the uses for which the Department of Economic and Community Development (DECD) spends Manufacturing Assistance Act bond proceeds to include programs and activities related to economic clusters. It also allows DECD to use \$5 million for the manufacturing competitiveness grants program.

EFFECTIVE DATE: July 1, 2004

Infoline Equipment (§ 18)

The act allows the Department of Social Services to give up to \$500,000 of the bond proceeds authorized for the state Capital Equipment Purchase Fund to the United Way of Connecticut to buy equipment for the 2-1-1 Infoline Program. Infoline is a single telephone source for information about community services, referrals to human services programs, and crisis intervention.

EFFECTIVE DATE: Upon passage

Milford/ Walnut Beach Projects (§§ 33 & 34)

The act gives Milford up to \$1 million in Urban Action bonding for the following projects in the Walnut Beach district: (1) building a pavilion in the parking area, (2) extending the boardwalk from Walnut Beach to Silver Sands State Park, (3) developing an arts district, and (4) developing Stowe Farm.

It also allocates up to \$1.5 million from bond funds authorized for the Department of Environmental Protection's State Parks Improvement Program for (1) extending the boardwalk from Silver Sands State Park to Walnut Beach and (2) creating handicapped access to Walnut Beach.

EFFECTIVE DATE: Upon passage

Allocation for Hartford Senior Centers (§ 35)

The act requires a January 2001 State Bond Commission allocation of Urban Action bonding to

Hartford for senior centers to remain available to Hartford for five years from the act's passage and bars it from being reallocated.

EFFECTIVE DATE: Upon passage

CAPITAL CITY ECONOMIC DEVELOPMENT AUTHORITY (CCEDA)

Special Capital Reserve Fund for Hartford Convention Center Bonds (§ 9)

The act allows CCEDA to establish one or more special capital reserve funds (SCRF) in connection with issuing or refinancing authority bonds for the Hartford convention center. It allows CCEDA to pay into a fund (1) any state appropriations for the convention center SCRF; (2) proceeds from the sale of convention center bonds, if the CCEDA resolution authorizing the bonds allows it; and (3) any other funds the authority receives for such a SCRF.

The act requires the SCRF to be used only for (1) paying principal and interest on SCRF-backed bonds, (2) buying SCRF-backed CCEDA bonds, and (3) paying any premiums required to pay off the bonds before maturity. It allows CCEDA to limit SCRF withdrawals so the SCRF balance does not fall below the "required minimum capital reserve." That minimum is (1) the maximum principal and interest or required sinking fund installment due on CCEDA bonds maturing in the current or any future calendar year or (2) the maximum SCRF amount required to preserve the bonds' federal tax exemption. The act permits CCEDA to let the SCRF balance fall below the minimum if no other funds are available to pay off SCRF-backed bonds.

The act allows CCEDA to decide not to issue new SCRF-backed bonds unless it deposits enough funds into the SCRF to keep its balance at or above the minimum reserve. By December 1 annually, the act automatically appropriates from the General Fund any amount needed to maintain the minimum reserve balance in the SCRF, as certified by CCEDA's chairman or vice-chairman to the OPM secretary and the state treasurer. Subject to its agreements with bondholders, CCEDA must repay the state from whatever funds are not needed for its other corporate purposes within one year after meeting all its obligations arising from bonds and notes outstanding on the date of the state allotment.

The act bars CCEDA from issuing SCRF-backed bonds to pay convention center project costs unless the state treasurer approves and CCEDA determines that the project's revenues will be enough to (1) pay off the bonds used to finance it, (2) maintain or increase any reserves CCEDA thinks advisable to secure their repayment, (3) cover the cost of maintaining and

insuring the project, and (4) pay any other required project costs.

The act requires that, in valuing the SCRF, investment assets be valued at market rates.

The act does not preclude CCEDA from establishing other non-SCRF debt service reserve funds in connection with its bonds.

EFFECTIVE DATE: July 1, 2004

Approval for Certain CCEDA Borrowing and Financial Arrangements (§ 21)

The act extends to CCEDA requirements already applicable to several other authorities. These are that it obtain the state treasurer's or deputy treasurer's approval before:

1. borrowing money or issuing bonds or notes backed by either a state guarantee or any kind of capital reserve fund that includes a state contribution or guarantee, such as a SCRF or
2. entering into any agreement or contract to moderate interest rate fluctuations or concerning interest rates, currency, cash flow, or similar issues that subjects any state-guaranteed or state-funded capital reserve fund to potential liability.

By law, the state treasurer's approval, in the first case, must be based on the authority's documenting that it has enough revenue to (1) pay off the bond or note principal and interest; (2) establish and maintain advisable reserves to secure the payment of principal and interest; (3) if applicable, pay the cost of maintaining, servicing, and insuring the purpose for which the bonds or notes are issued; and (4) pay other required costs. In the second case, the authority must demonstrate that its revenue is sufficient to meet the agreement's financial obligations.

The borrowing and interest rate agreement approval requirements already apply to the Connecticut Development Authority, the Connecticut Health and Educational Facilities Authority, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Housing Finance Authority, the Connecticut Housing Authority, and the Connecticut Resources Recovery Authority. Connecticut Innovations, Inc. is subject only to the agreement approval requirement.

EFFECTIVE DATE: July 1, 2004

Capital City Projects Bond Allocation Deadline (§ 10)

The act extends the deadline for the State Bond Commission to allocate up to \$115 million in state bonds for various Hartford projects by four years, from June 30, 2005 to June 30, 2009. The authorization covers the Civic Center and coliseum complex

reconstruction; riverfront infrastructure development; housing rehabilitation; new construction, demolition, and redevelopment projects; and parking.

EFFECTIVE DATE: July 1, 2004

Annual Status Report on Adriaen's Landing and UConn Football Stadium (§ 20)

The act adds several new requirements to the annual status report on the Adriaen's Landing and UConn football stadium projects the OPM secretary must submit to the legislative leaders and the Finance, Revenue and Bonding Committee. It requires each report to include (1) current state and private funding estimates for each part of the project for each fiscal year the funding is available, (2) a summary of total project funding from various sources, and (3) detailed financial information on the income and expenses of any public entity operating at Adriaen's Landing.

The new funding summary must cover funding from:

1. general obligation bonds;
2. General Fund surpluses;
3. CCEDA revenue bonds and associated General Fund costs, including General Fund debt service reimbursements for the parking garage and utility plant;
4. tax exemptions and credits for any part of the project;
5. payments in lieu of taxes to any municipality for any project component;
6. convention and science center operating subsidies;
7. private investment; and
8. any other sources.

The act also specifically requires the report to include the following information on the science center, as it already does for other parts of the Adriaen's Landing project: (1) a description, (2) a detailed current budget with a comparison to the budget presented to the General Assembly before May 2, 2000, (3) a projected completion date, (4) changes in planning or execution from the prior year and reasons for the changes, and (5) end-of-year status.

Finally, the act requires the OPM secretary to submit the annual status reports only until five years after the convention center opens, instead of indefinitely as under prior law.

EFFECTIVE DATE: July 1, 2004

CONNECTICUT HEALTH AND EDUCATIONAL FACILITIES AUTHORITY (CHEFA)

CHEFA issues bonds to finance projects for qualified higher education institutions; nonprofit organizations; and hospitals, health care centers, nursing

homes, and other health care institutions. The act expands the authority's activities and powers in several ways.

Captive Insurer Demonstration Grant Program (§ 22)

The act requires CHEFA to establish a three-year demonstration program to provide grants to nonprofit hospitals that establish captive insurers, or expand coverage offered by existing captive insurers, to provide medical malpractice insurance coverage to physicians and surgeons who have hospital privileges at the hospitals. (A "captive insurer" is an insurance company that its owner forms to ensure the owner's own risk.) CHEFA must use \$1.5 million from its reserves to establish a fund to pay for the grants. The fund may also cover legal, actuarial, consulting, and other insurance or indemnity-related costs.

Grants are limited to \$750,000 per captive insurer and to establishing or expanding up to two such entities. Grants must be awarded based on each hospital's size and financial resources. Hospitals receiving grants must agree to give CHEFA, at least annually, information on its captive insurer's performance, including premiums charged, operating costs, claims experience, estimated savings compared to the hospital's earlier insurance methods, and any other information CHEFA requires.

CHEFA must submit annual reports on the program that include analyses of the hospitals' information. The first report is due by February 1, 2005 and the last by February 1, 2008. It must submit the reports to the General Assembly and make them public.

Any money left in the program fund at the end of the program reverts to CHEFA's reserves.

EFFECTIVE DATE: Upon passage

Hospital Lease Access Program (§ 23)

The act requires CHEFA to establish a program, within available resources, to allow nonprofit hospitals to finance any of their federally tax-exempt costs for digitizing patient records. The program must provide individual hospitals or groups of hospitals with access to leases for this purpose.

EFFECTIVE DATE: Upon passage

Preschool Facility Projects (§§ 24 & 32)

The act allows CHEFA to issue bonds to fund loans to municipalities, local and regional school boards, regional educational service centers, and other participating qualified nonprofit organizations to enable them to acquire, build, improve, expand, furnish, or equip facilities for providing educational programs for three- and four-year-olds. Such programs can include school readiness and Head Start programs. A local

school board must have the approval of its municipal legislative body to participate.

The act authorizes participating entities to borrow money from CHEFA for authorized preschool projects and allows them to make any loan or other agreements or promises the borrowing requires.

The act allows both the preschool project program bonds and bonds issued to finance loans to child care and child development centers under an existing CHEFA program, to be fully or partly backed by fees, charges, tuition, other revenues, or third-party payments on behalf of the children the programs serve. It exempts any CHEFA preschool facility bonds from participating municipalities' statutory debt limits. The bonds must be secured only by the revenues pledged for their repayment and are not backed by the municipalities' general taxing power or by any other municipal property.

The act requires CHEFA to adopt procedures to carry out these provisions and makes conforming changes.

EFFECTIVE DATE: Upon passage

Funding for Equipment (§§ 17 & 25)

The act allows CHEFA, at the discretion of the OPM secretary and the state treasurer, to create one or more state-backed special capital reserve funds in connection with financing up to an aggregate of \$100 million for equipment for participating health care institutions. The funding may include the costs of installation and any building alterations needed to install or operate the equipment.

The act allows CHEFA to finance the purchase of any equipment for higher education and health care institutions, not just equipment bought or leased for more than \$25,000 that has an estimated useful life of more than four years. It also allows the authority to finance any operating equipment and machinery for a qualified nonprofit organization, not just equipment needed for an authority-financed project.

EFFECTIVE DATE: The provision concerning the special capital reserve fund is effective July 1, 2004. The expanded equipment financing authority is effective on passage.

Subsidiaries (§ 26)

By law, CHEFA can establish subsidiaries and transfer money or property to them. The act specifies that the subsidiaries must be formed to carry out CHEFA's public purposes. It allows a subsidiary to be organized as a stock or nonstock corporation or limited liability company and gives it the powers CHEFA grants in the resolution establishing it as well as any other power granted by law. It makes the CHEFA

subsidiaries quasi-public agencies, thus subjecting them to statutory procedural, operating, and reporting requirements for such agencies. These include requirements for annual reports and audits and a requirement that they give notice before adopting new procedures.

EFFECTIVE DATE: Upon passage

Authority Powers (§§ 27-31)

The act allows CHEFA to issue taxable bonds and notes if it finds that issuance is necessary, in the public interest, and furthers CHEFA's purposes and powers.

It allows CHEFA to give grants and other forms of financial assistance to higher education and health care institutions, nursing homes, childcare and child development facilities, and qualified nonprofit organizations. Under prior law, CHEFA could only give loans to such entities. It requires grants and financial assistance to be governed by written procedures adopted by the CHEFA board.

The act expands CHEFA's options for investing its funds. It allows the authority to invest bond proceeds in instruments other than federal, state, or federally guaranteed obligations. It increases CHEFA's flexibility to enter into arrangements to manage interest rate and cash flow fluctuations in connection with its bonds or investment programs and allows it to enter into credit enhancement or liquidity agreements in connection with those arrangements. It also allows the authority, under certain conditions, to pay its bonds or other debt in foreign currencies in connection with a currency swap.

EFFECTIVE DATE: Upon passage

BRIDGEPORT SCHOOL CONSTRUCTION PROJECTS

Consolidated Project Application (§ 36)

The act allows the Bridgeport board of education to submit a consolidated grant application for several school construction projects and be eligible for a single grant for the state share of all the projects. It allows discretionary federal block grant and other designated funds to be considered part of the local share of the projects, despite restrictions limiting use of those funds to specific schools. (The state reimburses school districts for a percentage of the eligible costs of school construction projects depending on the district's wealth and the type of project. Any unreimbursed part of the project's cost is considered the local share.)

The act also allows the consolidated Bridgeport project to be classified as a renovation for purposes of school construction grants. Ordinarily, to be eligible for a school construction grant, a renovation project must (1) produce a school with a useful life comparable to

that of a new school and (2) cost less than building a new school.

EFFECTIVE DATE: Upon passage

Projects Added to the 2004 Authorization List (§§ 37 & 38)

The act waives the June 30, 2003 application deadline and adds the following Bridgeport school construction projects to the 2004 school construction project authorization list (approved in the 2004 regular session as part of PA 04-213):

1. a consolidated school construction project with an estimated total cost of \$25 million and
2. purchase and alteration of a University of Bridgeport facility with an estimated total cost of \$35.5 million.

The waivers are contingent on Bridgeport's filing applications for the projects by June 30, 2004 and meeting all other school construction project requirements.

EFFECTIVE DATE: Upon passage

Change in Project Scope (§ 39)

The act waives laws and regulations requiring that a school construction project's scope be established when the grant application is filed to allow Bridgeport to change the project for building a new Hall Elementary School, which the General Assembly authorized in 2001, to a project to renovate Skane Elementary School.

EFFECTIVE DATE: Upon passage

LOCAL CAPITAL IMPROVEMENT PROGRAM (LOCIP) (§ 5)

Despite any funding reduction, the act allows municipalities to obtain the full LOCIP credit they would have received if the state had authorized \$30 million for LOCIP in each of FYs 2004 and 2005. Under LOCIP, the OPM secretary allocates a share of available state funds to each municipality based on miles of road, population density, and population factors and credits the amount to each town's LOCIP account. A town may use its LOCIP credits to reimburse local spending for approved qualified projects.

EFFECTIVE DATE: Upon passage

FINANCIAL ASSISTANCE TO TORRINGTON (§ 13)

Between July 1, 2001 and June 30, 2007, the act allows DECD to provide bond-funded grants, loans, loan guarantees, insurance contracts, investment, or any combination of these forms of assistance totaling a maximum of \$30 million to the Downtown Torrington

Redevelopment LLC to restore and improve property in Torrington. By law, the General Assembly must approve state assistance to any applicant or business project that exceeds \$10 million in any two-year period. EFFECTIVE DATE: July 1, 2004

GROTON WASTEWATER TREATMENT PROJECT (§40)

The act waives statutory requirements for Clean Water Fund projects to make Groton eligible for a grant of up to \$2 million to cover additional eligible costs for upgrading its wastewater treatment plant. EFFECTIVE DATE: Upon passage

PROGRAM FOR CHILDREN WITH SERIOUS CHRONIC MEDICAL CONDITIONS (§ 41)

The act requires the Department of Children and Families commissioner to establish a pilot program for affordable housing and support services to families whose children have serious, chronic medical conditions and continuing, significant health care needs. The commissioner must collaborate with the following to establish the program: (1) the commissioners of Economic and Community Development, Social Services, Mental Retardation, and Public Health; (2) the OPM secretary; and (3) the Connecticut Housing Finance Authority executive director. EFFECTIVE DATE: July 1, 2004

BACKGROUND

Related Act

PA 04-251 also allows Bridgeport to count federal funds as part of its local contribution to the cost of state-aided school construction projects.

PA 04-2, May 2004 Special Session—HB 5801 *Emergency Certification*

AN ACT CONCERNING BUDGET IMPLEMENTATION

SUMMARY: This act makes a wide variety of changes in state law required to implement the state budget for FY 2005. It also makes corrections, revisions, and modifications in many state laws, including acts passed earlier in 2004.

The act:

1. requires towns to revalue property for tax purposes every five years instead of every four;

2. allows towns required to revalue property in 2003, 2004, or 2005 to delay revaluation to 2006;
3. increases judges' and family support magistrates' salaries by 5.5% per year for three years;
4. reduces the number of additional prisoners the correction commissioner can send to be incarcerated out-of-state from 2,000 to 1,000 in FY 2005 but allows her to send an additional 1,000 out-of-state during FYs 2006 and 2007;
5. extends a freeze on inflationary adjustments in hospital rates for Medicaid services through March 31, 2008;
6. requires prior authorization for diabetes, asthma, and cancer drugs provided through certain state medical assistance programs; and
7. increases state reimbursement rates for licensed residential care homes.

The act changes several previously adopted FY 2005 appropriations and funding allocations, transfers previously appropriated FY 2005 funds, and carries forward certain FY 2004 appropriations instead of allowing them to lapse. It also adjusts the management of state funds to implement (1) the state's new financial accounting system (CORE-CT) and (2) new gift disclosure requirements for state contractors.

The act makes several additional changes in property tax laws, including:

1. restoring a mandatory property tax exemption for the disabled that had been suspended for one year;
2. requiring Killingly and North Stonington to refund taxes on property in those towns that was subject to Rhode Island property taxes before October 1, 2002; and
3. when state appropriations are insufficient to pay the full amount, requiring the Office of Policy and Management (OPM) secretary to proportionately reduce state reimbursements to enterprise zone towns for revenue losses from manufacturing machinery and equipment property tax exemptions.

With regard to state taxes, the act increases the gasohol tax from 24 to 25 cents per gallon, revises a sales tax exemption for for-profit hospitals, and makes the exemption effective a year earlier than previously required.

In addition to the human services program changes mentioned above, the act, among other things, extends Medicaid coverage for adult substance abuse rehabilitation and exempts State Aided General Assistance (SAGA)-paid prescription drugs from a pharmacy dispensing fee that applies to other state medical assistance programs.

The act also:

1. eliminates restrictions on disclosing a sexual harassment complainant's identity while a public agency is investigating the complaint;
2. exempts five additional public housing projects from state requirements regarding disposal of projects that received state financial assistance;
3. allows the Department of Economic and Community Development (DECD) commissioner to waive certain housing authority regulations for a Wallingford project;
4. expands the OPM secretary's powers over Adriaen's Landing and the UConn Stadium and allows the secretary and the Capital City Economic Development Authority to provide construction and financial management for the proposed Science Center;
5. establishes two sets of criteria for determining whether a water supply source can be abandoned; and
6. requires the Department of Environmental Protection (DEP) commissioner, when making determinations on solid waste facility permits, to consider whether the action will cause disproportionately high adverse human health or environmental effects.

Finally, the act requires specified reports to the legislature from the banking commissioner and the OPM secretary and requires retailers to report town-by-town sales tax data to the state.

EFFECTIVE DATE: Various, see below.

APPROPRIATIONS AND FUND TRANSFERS (§§ 1-5, 40, 72, 74, & 75)

The act transfers various FY 2005 appropriations to different agencies and programs and carries forward certain unspent FY 2004 appropriations instead of allowing them to lapse. It specifies how the funds carried forward must be spent in FY 2005. The act also appropriates \$3,774,657 to the Labor Department for FY 2005 for the Workforce Investment Act.

EFFECTIVE DATE: Upon passage and July 1, 2004, depending on the specific transfer.

RETIREMENT AND HEALTH INSURANCE BENEFITS (§ 6)

The act establishes in statute the existing administrative practice of giving legislative branch elected officials and employees and executive branch elected officials the same retirement and health insurance rights and benefits granted to state employees under the union coalition contract. The provision is retroactive to November 1, 1989 to cover the period since the practice began.

EFFECTIVE DATE: Upon passage

LIFE INSURANCE BENEFITS (§ 7)

The act establishes in statute the existing administrative practice of extending state employee life insurance coverage to the state's executive branch elected officers (the governor, lieutenant governor, attorney general, treasurer, comptroller, and secretary of the state). This is retroactive to November 1, 1989 to cover the period since the practice began.

EFFECTIVE DATE: Upon passage

STATE MARSHAL ACCOUNT (§ 8)

The act eliminates (1) the state marshal account as a separate nonlapsing account in the General Fund and (2) the requirement that the first \$250,000 collected from two fees be credited to the state marshal account for the commission's operating expenses. The two fees are the (1) \$250 annual fee state marshals pay the State Marshal Commission and (2) additional \$5 filing fee, which § 112 of the act repeals, for civil actions other than small claims cases. Under the act, money from the state marshal annual fee must be deposited in the General Fund.

The act also eliminates requirements that the (1) OPM secretary review and approve the commission's budget through July 1, 2006 and (2) State Marshals Advisory Board submit a request for administrative support to the commission before the start of each fiscal year.

EFFECTIVE DATE: July 1, 2004

Background—State Marshal Commission and Advisory Board

The State Marshal Commission fills vacancies in state marshal positions, establishes professional standards for marshals (in consultation with the State Marshals Advisory Board), and reviews and audits the records and accounts of state marshals. The commission can remove a state marshal for cause, after notice and hearing.

The State Marshals Advisory Board consists of 24 state marshals. Its members are elected by the state marshals in each county. Members serve for one year and can be reelected. Two members serve as ex officio, nonvoting members of the State Marshal Commission.

HUMAN RIGHTS REFEREES (§ 9)

The act increases the number of human rights referees from five to seven beginning July 1, 2004. Each human rights referee serving on that date must complete his term. Thereafter, just as under prior law,

the governor appoints human rights referees, with the advice and consent of both houses of the General Assembly, to serve for a three-year term.

EFFECTIVE DATE: Upon passage

JUDICIAL SALARIES (§§ 10-12 & 15)

The act increases the salaries of judges and family support magistrates by 5.5% on each of the following dates: January 1, 2005, January 1, 2006, and January 1, 2007. The chart below displays the effect of these increases on salaries.

<i>Position</i>	<i>Prior Law</i>	<i>Under the Act</i>			
	<i>As of 4/1/02</i>	<i>As of 1/1/05</i>	<i>As of 1/1/06</i>	<i>As of 1/1/07</i>	
Chief Justice of the Supreme Court	\$149,582	\$157,809	\$166,489	\$175,645	
Chief Court Administrator*	143,738	151,644	159,984	168,783	
Supreme Court Associate Justice	138,404	146,016	154,047	162,520	
Appellate Court Chief Judge	136,873	144,401	152,343	160,722	
Appellate Court Judge	129,988	137,137	144,680	152,637	
Deputy Chief Court Administrator**	127,617	134,636	142,041	149,853	
Superior Court Judge	125,000	131,875	139,128	146,780	
Chief Family Support Magistrate	108,821	114,806	121,120	127,782	
Family Support Magistrate	103,569	109,265	115,275	121,615	

* The chief court administrator earns this salary if he is a judge of the Supreme, Appellate, or Superior Court.

**The deputy chief court administrator earns this salary if he is a Superior Court judge.

The act's provisions result in salary increases for other officials whose salaries are tied to those of judges. The salaries of workers' compensation commissioners vary depending on experience and are tied to those of Superior Court judges. The salaries of probate court judges are capped at 75% of a Superior Court judge's salary.

The act also increases the per diem fees paid to judge trial referees from \$200 to \$211 and to family support referees from \$180 to \$190.

EFFECTIVE DATE: January 1, 2005

CIVIL FILING FEES (§§ 13, 14, & 112)

The act eliminates a separate \$5 filing fee that PA 01-9 (June Special Session) imposed on all civil actions except small claims matters. The filings affected by the

act's fee elimination are claims (1) valued at less than \$2,500 and (2) those involving summary process, landlord and tenant disputes, paternity establishment, and domestic violence-related restraining orders.

The elimination of the \$5 fee does not affect the cost of filing claims valued at \$2,500 or more because the act increases the existing filing fee for such cases by the same amount, from \$220 to \$225.

EFFECTIVE DATE: July 1, 2004

BANKING COMMISSIONER'S REPORT (§ 16)

Within 30 days after the end of each quarter of the fiscal year, the act requires the banking commissioner to submit to the Appropriations Committee, through the Office of Fiscal Analysis, a report showing the amount of each fee, charge, assessment, fine, civil penalty, settlement payment, and other revenue the Banking Department collected during the preceding quarter.

EFFECTIVE DATE: July 1, 2004

CORRECTIONS DEPARTMENT APPROPRIATION (§ 17)

The budget act (PA 04-216, § 43) carries forward and transfers \$1.25 million from the Department of Correction's (DOC) Personal Services account to its Other Expenses account for FY 2004-05 for use in performing mental health assessments of prisoners housed at the Northern Correctional Center. This act permits DOC to use these funds to pay plaintiffs' attorneys fees, as well.

EFFECTIVE DATE: July 1, 2004

SALMON RIVER STATE PARK (§ 18)

The act appropriates \$10,000 from the General Fund for FY 2004-05 to DEP for artesian well repairs at Salmon River State Park.

EFFECTIVE DATE: July 1, 2004

ATTORNEY ASSISTANCE PROGRAM (§§ 19-22)

The act immunizes two classes of people from liability for damages or injuries caused in the discharge of their duties unless they acted wantonly, recklessly, or maliciously: (1) people appointed to the advisory committee that assists in the crisis intervention program for attorneys who suffer from alcohol, substance abuse, gambling, or behavioral health problems and (2) attorneys appointed by the court pursuant to Superior Court rules to inventory the files of an inactive, suspended, disbarred, or resigned attorney and to take necessary action to protect the interests of his clients. The act requires anyone allegedly harmed by an

advisory committee member's negligence to bring his claim to the claims commissioner.

The act makes confidential all information given or received in connection with crisis intervention and referral assistance, including the identity of any attorney seeking or receiving such intervention and assistance. It prohibits disclosure except where reasonably necessary to accomplish the purposes of the intervention and assistance. The act also prohibits disclosure in any civil or criminal case or proceeding or in any legal or administrative proceeding, unless the attorney who sought or obtained the assistance waives the privilege or the law otherwise requires disclosure.

The act prohibits attorneys who provide crisis intervention and referral assistance from disclosing any information given or received unless the rules governing communications between attorney and client require disclosure. Except where the privilege has been waived or disclosure is required by law, the act prohibits anyone in any civil or criminal case or proceeding, or in any legal or administrative proceeding, from requesting or requiring any information given or received in connection with the crisis intervention and referral assistance.

EFFECTIVE DATE: October 1, 2004

KILLINGLY AND NORTH STONINGTON PROPERTY TAXATION (§ 23)

The act requires two towns and the special taxing districts within them to abate or refund taxes on property subject to property taxation in Rhode Island on or before October 1, 2002. The Killingly and Stonington tax assessor must remove this property from their October 1, 2002 and October 1, 2003 grand lists within 30 days after the act takes effect by issuing a single correction certificate that identifies each property and cites the act as the reason for removing the property from the list.

The assessors must abate any taxes that were due but not paid on these properties and refund the owners for any taxes they paid plus any interest charged for late payment. The assessors must refund the owners within 30 days after they filed the certificate.

The assessors must also give written notice to special district clerks about any property within their districts that was removed from the towns' grand lists. They must do this within 10 days after correcting their grand lists. The clerks must correct the districts' grand lists, abate any taxes that have not been paid, and refund those owners who had paid taxes, plus any interest for late payments. The clerks must abate or refund the taxes within 30 days after correcting the districts' grand lists.

The act prohibits any assessor whose town shares a boundary with Rhode Island from adding any property to the October 1, 2004 and October 1, 2005 grand lists if

the property was subject to Rhode Island property taxes on or before October 1, 2002.

EFFECTIVE DATE: Upon passage and applicable to assessment years starting on or after October 1, 2002.

STATE REIMBURSEMENTS FOR GEOGRAPHICALLY TARGETED TAX ABATEMENTS (§ 24)

By law, the 17 towns with enterprise zones must exempt manufacturing facilities and machinery and equipment from property taxes, and the state must reimburse them for half of the revenue loss. Starting in FY 2003-04, the act requires the OPM secretary to proportionately reduce each town's grant if the amount budgeted for all grants is not enough to reimburse all of the towns for half the revenue loss. The secretary must already do this for grants that reimburse all towns for property tax exemptions granted to commercial motor vehicles and newly acquired manufacturing machinery and equipment.

EFFECTIVE DATE: Upon passage and applicable to assessment years beginning on or after October 1, 2002.

TOWN-BY-TOWN SALES TAX DATA REPORTS (§ 25)

The act requires any retailer with sales in more than one town to report on its quarterly sales tax return: (1) the town where each taxable sale occurred and (2) the amount of sales tax it collected in each town. The information must be reported in a form prescribed by the revenue services commissioner. The new requirement starts with the calendar quarter beginning July 1, 2004.

EFFECTIVE DATE: Upon passage

GASOHOL TAX INCREASE (§ 26)

The act increases the motor fuel tax on gasohol from 24 to 25 cents per gallon as of July 1, 2004, thus making the gasohol tax the same as the gasoline tax.

EFFECTIVE DATE: Upon passage

PROPERTY REVALUATION STUDY (§ 27)

The act requires the OPM secretary to (1) examine the policies and regulations governing property revaluation and (2) report his findings and recommendations on making them clearer and more effective to the Finance, Revenue and Bonding Committee by January 1, 2005.

EFFECTIVE DATE: Upon passage

HOUSING AUTHORITY PROJECT DISPOSAL EXEMPTIONS (§ 28)

The act makes an additional five public housing projects exempt from requirements regarding the disposal (i.e., selling, leasing, transferring, or destroying, or contracting to do so) of such projects. These requirements apply to projects owned by housing authorities that have received state financial assistance. The additional projects are:

1. Evergreen Apartments in Bridgeport;
2. Quinnipiac Terrace/Riverview in New Haven;
3. Dutch Point in Hartford;
4. Southfield Village in Stamford; and
5. Fairfield Court in Stamford upon approval by the U.S. Department of Housing and Urban Development of a revitalization application and plan, under the HOPE VI Revitalization Program established by federal law, provided the approved plan includes at least one-for-one replacement of low- and moderate-income units.

In general, the law prohibits housing authorities that receive or have received any state financial assistance from disposing of a housing project or any part of it if doing so would cause the project or any part of it to be unavailable for use as low- or moderate-income rental housing.

EFFECTIVE DATE: July 1, 2004

RESPONSIBILITY FOR STATE AGENCIES' WORKERS' COMPENSATION POLICIES (§ 29)

The act gives the administrative services commissioner sole responsibility for establishing procedures for all executive branch agencies that are part of the state's workers' compensation program, except for issues related to modified or alternative duty that are mandatory subjects of collective bargaining. Under prior law, state agencies had to follow state worker's compensation law, but the larger state agencies developed their own policies and procedures within the law's limits.

EFFECTIVE DATE: July 1, 2004

CONNECTICUT COMMISSION ON CULTURE AND TOURISM (§ 30)

The act changes the name of the Connecticut Commission on Arts, Tourism, Culture, History and Film to the Connecticut Commission on Culture and Tourism. PA 04-205 makes the same change.

EFFECTIVE DATE: Upon passage

PILOT PAYMENTS FOR NEW TORRINGTON COURTHOUSE (§ 31)

By law, towns where tax-exempt, state-owned property is located receive an annual payment in lieu of taxes (PILOT) from the state to compensate them for property taxes that would otherwise be payable on it. But, instead of Torrington receiving the full PILOT on the new Torrington courthouse, this act divides the payment between Torrington and Litchfield for 14 years starting in the grand list year when the courthouse is completed. Under the act, for each of the first through the seventh years of the payments, Torrington receives 55% of the annual payment and Litchfield, 45%. For each of the eighth through the 14th years, Torrington receives 65% and Litchfield 35%.

EFFECTIVE DATE: Upon passage

DELAY IN REVALUATION (§ 32)

The act allows municipalities that, by law, must revalue real property in the 2003, 2004, or 2005 assessment year to delay revaluation to the 2006 assessment year, if their legislative bodies (the board of selectmen in town meeting towns) approve the delay. Subsequent revaluations must be made every five years thereafter.

The assessor or board of assessors in a municipality that delays revaluation must prepare a revised grand list for the 2003 assessment year. The grand list must reflect the assessments for the 2002 assessment year, subject only to changes in ownership, new construction, and demolitions. The assessor must send notice of any increase in the valuation of real estate over 2002 valuation to the affected person's last-known address. The person can appeal the increase during the next regular session of the board of assessment appeals at which appeals may be heard.

The act allows the person or entity authorized by law to prepare rate bills in a municipality that has delayed revaluation under the act to prepare new rate bills, notwithstanding any law or municipal charter to the contrary.

EFFECTIVE DATE: Upon passage and applicable to assessment years starting on or after October 1, 2003.

CHANGE IN REVALUATION CYCLE (§ 33)

The act replaces the prior statutory revaluation schedule, in which municipalities had to revalue property every four years, with a requirement that they revalue five years after their last revaluation, except as provided for by the delay described above.

By law, municipalities must conduct certain revaluations by physical inspections and can conduct others by statistical means. The act requires physical

revaluations every 10, rather than every 12, years. The act requires a municipality that conducted its last revaluation by statistical means to conduct its next revaluation by physical inspection, unless it has already conducted a physical revaluation within the previous ten years. It allows municipalities that conducted their last revaluations by physical inspections to conduct a statistical revaluation next time.

EFFECTIVE DATE: October 1, 2003 and applicable to assessment years starting on or after that date.

HOSPITAL INPATIENT RATES (§ 34)

PA 04-258 increases the inpatient hospital rates the Department of Social Services (DSS) pays for Medicaid-covered services by (1) establishing minimum target amounts per discharge and (2) eliminating the freeze on inflationary adjustments. The target amount minimums begin on April 1, 2005. Under prior law, DSS would be required to inflate the target amounts, beginning October 1, 2004. This act extends the freeze on these inflationary adjustments through March 31, 2008.

EFFECTIVE DATE: July 1, 2004

TEMPORARY FAMILY ASSISTANCE (TFA)— PAYMENT OF BENEFITS (§ 35)

PA 04-258 prohibits DSS from granting TFA to applicants before they have attended the initial scheduled employment service assessment interview and worked on their employment plan. But DSS may not deny benefits when it schedules the appointment more than 10 business days after the person applies, nor may it deny assistance when the Labor Department fails to complete the applicant's employment plan within 10 days of the date the applicant attends the interview. This act instead prohibits the delay, not the denial, of benefits in these instances. This allows DSS to deny benefits when applicants are otherwise ineligible for them.

EFFECTIVE DATE: July 1, 2004

FUNDING FOR CAUSA (§ 36)

The act re-allocates \$150,000 of available Temporary Assistance for Needy Families (TANF) High Performance Bonus funds in FY 2004-05 for use as a grant to the Connecticut Association for United Spanish Action, Inc. (CAUSA). Specifically, it takes \$100,000 from the emergency shelters appropriation and \$50,000 from Good News Garage and directs DSS to use these funds for the CAUSA grant. The \$100,000 grant must be made during FY 2004-05.

EFFECTIVE DATE: July 1, 2004

DISCLOSURE OF SEXUAL ASSAULT COMPLAINANT'S IDENTITY (§ 37)

The act makes a sexual harassment complainant's identity publicly disclosable during a public agency's internal investigation of the complaint. It does this by eliminating a provision in PA 04-171 limiting disclosure. Under 04-171, the complainant's name, address, and other identifying information is confidential, except the agency must disclose (1) the complainant's name to the accused during the investigation and (2) any information required to be disclosed by a court order. The agency must also disclose the complainant's name to people participating in the investigation.

EFFECTIVE DATE: Upon passage

GENERAL ASSISTANCE AUDITS (§ 38)

The act authorizes the OPM secretary, when the DSS commissioner requests it, to cancel any receivable that results from an audit against a town, including any receivables associated with the old General Assistance (GA) program. The secretary can (1) direct the DSS commissioner to estimate any potential receivables from future GA audits and (2) authorize her to suspend any future audits. When the latter occurs, the commissioner must notify the towns.

In 1997, the legislature directed DSS to take over administration of the GA program from the 169 towns that were administering it. Until that time, towns ran the program and the state generally reimbursed them for most of the costs. DSS would periodically perform audits to ensure towns were billing properly. In 1998, DSS took over all town programs, except Norwich's. (Towns had the ability to petition DSS to continue their programs and only Norwich chose to do so.)

PA 03-3, June 30 Special Session, eliminated state reimbursement to towns for any GA medical assistance expenses incurred after September 30, 2003, and any cash assistance benefits or program administrative costs incurred after February 29, 2004. DSS officially took over Norwich's program on March 1, 2004.

EFFECTIVE DATE: July 1, 2004

EMPLOYEE TRANSFERS TO DEPARTMENT OF INFORMATION TECHNOLOGY (DOIT) (§ 39)

The act prohibits transferring any state employee to DOIT before October 1, 2004 in order to transform or consolidate the state's information technology services. But this prohibition does not affect an employee who was transferred to and employed by DOIT before the act took effect on May 12, 2004. To implement this provision, the act allows the OPM secretary during FY 2005 to transfer funds appropriated to DOIT for

personal services to other agencies' personal services appropriations.

EFFECTIVE DATE: Upon passage

REPEAL OF CERTAIN PREFERRED DRUG LIST EXEMPTIONS (§ 41)

By law, DSS must adopt preferred drug lists for certain medical assistance programs (Medicaid, ConnPACE, SAGA, and, under certain conditions, HUSKY B). Prescriptions for drugs not on the list require prior authorization, with exemptions for mental health-related and antiretroviral drugs. PA 04-258, § 43 added an exemption from the prior authorization requirement for drugs for diabetes, asthma, and cancer.

This act eliminates PA 04-258's exemption for diabetes, asthma, and cancer drugs, effectively restoring the original statute.

EFFECTIVE DATE: July 1, 2004

ADRIAEN'S LANDING AND UCONN STADIUM (§§ 42 & 43)

The act expands the powers of the OPM secretary with regard to Adriaen's Landing and the new UConn stadium. By law, the secretary can acquire real property in connection with these projects by several means, including exchange. The act additionally allows him to exchange the property he has acquired for other real property when he believes that the exchange will better conform the site boundaries to the final plans or facilitate the layout, development, or financing of the public and private improvements contemplated in the master development plan.

By law, the secretary can lease or sublease property in connection with the overall project and on-site related private developments. (The overall project includes the convention center, stadium, and parking projects.) The act additionally allows him, with respect to this property, to (1) convey the property; (2) grant a temporary or permanent easement and rights-of-way; and (3) enter into access, support, common area maintenance, and similar agreements.

EFFECTIVE DATE: Upon passage

ABANDONING WATER SOURCES (§§ 44 & 45)

The act establishes two sets of criteria by which the public health commissioner must determine whether a water supply source may be abandoned. Abandoning a source permits its owner to dispose of it. The criteria are based on the volume of water that the source can dependably supply during a critical dry period without considering available water limitations. One set of criteria, which are essentially the previous ones for abandoning any water source, apply only to water

company-owned sources that yield less than 0.75 million gallons per day under these conditions. The second set apply to sources owned by water companies or other entities (e.g., a community water system or state agency) that are capable of yielding larger volumes.

Application Procedure

The act requires any entity seeking to abandon a water source to apply for an abandonment permit in the manner the commissioner prescribes. It requires the entity, 30 days before filing an application, to notify the chief elected official in each town in which the land containing the water supply is located. It permits the towns and other water companies to submit comments to the commissioner, which they must do within 60 days of receiving notice from the company. The commissioner must consider these comments in deciding whether to grant a permit.

Criteria for Smaller Water Sources

The act requires the commissioner to grant an abandonment permit to a water company that seeks to abandon a water source with a "safe yield" of less than 0.75 million gallons of water a day if he makes certain finding. It defines a "safe yield" as the maximum dependable quantity of water per unit of time that can flow or be pumped from a source during a critical dry period (neither the act nor the law define this term) without considering water limitations that may be available. These criteria apply to applications to abandon a groundwater source, a reservoir, a reservoir system (neither the act nor the law define this term), or any individual source in a reservoir system.

The act prohibits the commissioner from granting an abandonment permit if he determines that the company that owns the water source (presumably this could be a company other than the water company) would need the source in an emergency or that abandonment would impair its ability to provide a pure, adequate, and reliable water supply for current and future customers. Prior law applied these criteria to the water company.

As under prior law, the commissioner must determine that the water company does not need the source for its present or future water supply services. If a water company is required to file a water supply plan (i.e., it supplies water to 1,000 or more people or 250 or more consumers), the commissioner must also find that abandonment is consistent with that plan. The law defines a future source of water supply as one that is needed to serve areas reasonably expected to require service by the water company for up to 50 years after it

applies for the abandonment permit. The act applies these criteria to the company owning the water source.

Criteria for Larger Water Supplies

The act requires the commissioner to grant a permit to a water company or other entity that seeks to abandon a water source with a “safe yield” of more than 0.75 million gallons of water a day if he makes certain findings. He must find that the source’s size or condition makes it unsuitable for present or future water supply by the company or entity abandoning it or by the state. This criterion applies to a groundwater source, reservoir, reservoir system, or individual source in a reservoir system.

In making his decision, the act requires the commissioner to consider the source’s general utility and viability for use to meet water supply needs. (Unlike the criteria for smaller sources, the act does not specify whose supply needs he must consider). In assessing the source’s general utility, the act requires the commissioner to consider, among other factors:

1. the source’s safe yield, location relative to other public water supply systems, water quality, and potential for treatment;
2. water quality compatibility between systems and interconnections;
3. the extent of water-company owned lands for water supply source protection;
4. types of land uses and land use controls in the aquifer protection area or watershed and their potential impact on the source’s water quality; and
5. any physical limitations to water service, system hydraulics, and topography.

The commissioner must also consider (1) any public water supply plans that water companies and water utility coordinating committees must file by law, (2) any other water system plan he has approved, and (3) the efficient and effective development of public water supply in the state.

Common Criteria

In making his decision about abandoning a water supply source, the law requires the commissioner to consider the water company’s supply needs and consult with the environmental protection commissioner, the OPM secretary, and the Department of Public Utility Control. The act requires him to consider as well the state’s water supply needs and any comments affected municipalities submit.

Sale of Watershed Land to Nonprofit Conservation Groups

Finally, the act allows the commissioner to permit a water company to sell class I land to a private nonprofit landholding conservation company if he does not permit the company to abandon a source it does not currently use or need. Class I land is generally that adjacent to water supplies. Existing law, while generally prohibiting the sale of such land, allows the commissioner to permit a water company to sell or assign a conservation restriction or public access easement on class I land to such an organization.

EFFECTIVE DATE: October 1, 2004

ABANDONED PROPERTY HELD BY BANKS AND FINANCIAL INSTITUTIONS (§§ 46 & 47)

Abandoned Property Fee Exemption

The act allows banks and financial institutions to impose dormancy, abandonment, inactivity, or similar charges or fees on certain property they hold. Prior law prohibited them from imposing such fees or having the property or any agreement concerning it suggest that the property may be subject to them. The act continues to prohibit banks and financial institutions from imposing escheat charges or fees on the property.

Under the act, the institutions may impose fees on:

1. demand or savings deposits in the state,
2. funds paid in the state to buy shares or interests in a financial organization or a deposit made with them and any interest or dividends on those funds,
3. matured time deposits made in this state, and
4. personal property or money in safe deposit boxes on which the rental periods have expired.

Property From a Safe Deposit Box

By law, the holder of abandoned personal property from a safe deposit box must sell the property and give the state treasurer the sale proceeds, minus any charges that may be lawfully withheld. The act:

1. allows a holder to contract with a third party to store and sell the property and pay the proceeds to the treasurer, as long as the third party is bonded or insured in his performance of these activities;
2. exempts the holder from responsibility for claims related to property sales or transfers to third-parties for sale;
3. allows the holder to dispose of the abandoned property in any way it considers appropriate and exempts the holder from responsibility for

any claims related to the property disposition or the property itself, if the treasurer, by regulation or guideline, exempts the property from requirements that it be sold and the proceeds remitted to her; and

4. specifies that the charges that may lawfully be withheld from abandoned property sale proceeds paid to the treasurer include costs for storage, appraisal, advertising, and sales commissions as well as any charges owing under the safe deposit box rental contract.

EFFECTIVE DATE: Upon passage

PILOT PAYMENTS FOR HOSPITALS AND HIGHER EDUCATION INSTITUTIONS (§ 48)

The law exempts nonprofit hospitals and higher education institutions from property taxes, but the state reimburses towns for 77% of the taxes that would have been paid on the exempted property. OPM reduces the actual payment proportionally if the total of all payments exceeds the budgeted amount in any particular year.

Veterans' Hospitals

The act extends state payments in lieu of taxes (PILOTs) for nonprofit hospitals to a campus of the United States Department of Veterans Affairs (VA) Connecticut Healthcare Systems, starting with FY 2007. It phases in these PILOT grants over five years as shown below:

VA Hospital PILOT Phase-In

<i>Fiscal Year</i>	<i>% of Full PILOT</i>
2007	20
2008	40
2009	60
2010	80
2011 and after	100

Under the act, the VA hospital PILOT is subject to the same proportional reductions as other PILOT reimbursements if the annual appropriation for payments is not sufficient.

Private Higher Education Institutions

The act also tightens the criteria the OPM secretary uses to determine if the state will pay a PILOT grant for a private college or university. Under prior law, a town qualified for a PILOT if the institution was primarily engaged in providing education beyond the high school level. Under the act, the institution must also meet the

statutory definition of an "institution of higher education" or "independent college or university" and offer college- or university-level courses for credit that may be transferred to other colleges and universities.

By law, an institution of higher education is one that is licensed or accredited to offer one or more higher education degree programs. It can be a person, school, board, association, limited liability company, or corporation. An independent college or university:

1. is a nonprofit institution established in Connecticut,
2. is authorized to grant degrees here,
3. has its home campus in Connecticut,
4. is not part of the state's higher education system, and
5. has a primary function other than preparing students for religious vocations.

EFFECTIVE DATE: October 1, 2004 and applicable to assessment years starting on or after that date.

NEW BRITAIN'S MASTER HOUSING REVITALIZATION PLAN (§ 49)

The act makes technical changes and a conforming change specifying that New Britain's master revitalization plan, as authorized under PA 03-6, June 30 Special Session, may be amended.

EFFECTIVE DATE: Upon passage

SITING OF TRANSFER STATIONS (§ 50)

By law, the DEP commissioner may issue, deny, modify, renew, suspend, revoke, or transfer a permit for the construction, alteration, or operation of solid waste facilities. The act requires him, when deciding to grant or deny a permit to build or operate a new transfer station, to consider whether it will cause disproportionately high adverse human health or environmental effects.

EFFECTIVE DATE: October 1, 2004

SCIENCE CENTER CONSTRUCTION AND FINANCIAL MANAGEMENT (§ 51)

The act authorizes the Capital City Economic Development Authority and the OPM secretary to conclude a memorandum of understanding with the Connecticut Center for Science and Exploration for the authority and the secretary to provide financial and construction management services assistance for the center. The science center is being built in Hartford as part of the Adraien's Landing projects.

EFFECTIVE DATE: Upon passage

APPLICABILITY OF UCC TO CERTAIN STATE TRANSACTIONS (§§ 52-69)

The act:

1. expressly exempts pledges and liens issued in connection with the bonds and other obligations of the state and various state and local government entities from Article 9 of the Uniform Commercial Code (UCC), which deals with secured transactions;
2. strengthens the security backing the bonds of various governmental entities by expanding the assets they can pledge to repay their bonds and giving bondholders' pledges and liens priority over those of third parties;
3. changes one of the qualifications for serving on the Connecticut Higher Education Supplemental Loan Authority (CHESLA) board of directors;
4. expands CHESLA's options for investing its funds; and
5. makes various changes regarding municipal clean water project loan and grant financing.

EFFECTIVE DATE: Upon passage and applicable to any pledge, lien, or security interest created by the state or a state political subdivision or agency, and in existence on October 1, 2003 or created on or after that date.

Uniform Commercial Code Provisions

General Exemption (§ 52). The act specifies that Article 9 of the UCC does not apply to pledges or liens by the state or its political subdivisions or agencies that existed on or after October 1, 2003 if they are governed by a state law that:

1. creates the pledge or lien in connection with a state, subdivision, or agency bond or note and
2. explicitly makes the pledge or lien valid and binding against other parties.

Specific Entities. The act expressly exempts bond pledges and liens of the following entities or categories from the secured transaction provisions of the UCC:

- Connecticut Health and Educational Facilities Authority (§ 54)
- Capital City Economic Development Authority (§ 55)
- Lower Fairfield County Convention Center Authority (§ 56)
- University of Connecticut UConn 2000 bonds (§ 57)
- State Clean Water Bonds (§ 58)
- Connecticut Higher Education Supplemental Loan Authority (§ 62)

- Regional water pollution control authorities (§ 66)

It exempts the bond pledges and liens of the following entities from the UCC even though they are not state agencies or political subdivisions:

- Connecticut Student Loan Foundation (§ 65)
- Bristol Resource Recovery Facility Operating Committee (§ 67)
- Regional educational service centers (§68)

Increased Security for Pledges and Liens. The act allows the following entities to secure their bonds, notes, or other instruments by pledging any of their revenues and assets and gives these pledges priority over other third party liens:

- Connecticut Health and Educational Facilities Authority (§§ 53 & 54)
- Connecticut Higher Education Supplemental Loan Authority (§§ 60-62)
- Connecticut Student Loan Foundation (§ 65)
- Municipalities issuing bonds and notes for water pollution projects (§ 69(e))

CHESLA Changes

Board of Directors (§ 59). The act makes a change in the qualifications of the three members of CHESLA's board of directors representing Connecticut higher education institutions by allowing them to be retired as well as active trustees, directors, or employees of such institutions.

Investment Options (§§ 63 & 64). The act expands the authority's options for investing its funds to allow it to:

1. invest in the obligations of the U.S. Export-Import Bank, Farmers Home Administration, Federal Financing Bank, Federal Housing Administration, General Services Administration, U.S. Maritime Administration, U.S. Department of Housing and Urban Development, Farm Credit System, and Resolution Funding Corporation and
2. make investment agreements with financial institutions whose long-term, instead of just their short-term, obligations are rated in the top two categories by either a national rating service or one recognized by the Connecticut banking commissioner.

Municipal Water Pollution Control Project Financing (§ 69)

The act makes several changes regarding municipal clean water project loan and grant financing. It:

1. specifies that issuance and renewal of interim municipal clean water project loan or grant obligations are not subject to the law governing temporary notes issued to acquire or construct all or part of a sewer system;
2. specifies that pledges for repayment of municipal clean water project loan or grant obligations remain in effect until the principal and interest is paid off or until some other provision for their repayment is made;
3. expressly allows a municipality to authorize a project loan or grant agreement between it and the state under the Clean Water Act by vote of its legislative body and water pollution control or sewer authority, if any, regardless of any state law, special act, or charter provision governing such activities;
4. allows a municipality to secure repayment of a project loan or grant agreement by pledging revenues or other funds from the public sewer or water system, including holding or depositing the revenues in separate accounts and making agreements with holders concerning rates, charges, and other aspects of sewer or water system operations; and
5. defines a municipal legislative body for purposes of approving municipal clean water project loan or grant obligations as (a) the board of selectmen in towns without a charter, special act, or home rule ordinance; (b) the council, board of aldermen, representative town meeting, board of selectmen, or other legislative body in towns or boroughs with charters, special acts, consolidation ordinances, or home rule ordinances; (c) the board of burgesses or other elected legislative body in a borough; or (d) the district committee or other elected legislative body in a district, metropolitan district, or other municipal corporation.

Background – Uniform Commercial Code - Article 9

Article 9 of the UCC deals with security interests created by contracts in personal property that secure payment or other performance the debtor is obliged to make. Article 9 does not apply to the extent that another statute expressly governs the creation, perfection, priority, or enforcement of a security interest created by the state or one of its governmental units. Thus, other rules prevail over Article 9, but Article 9 applies if there is no express rule. PA 03-62, which took effect on October 1, 2003, eliminated a blanket Article 9 exemption for government obligations.

CRRA AD HOC MEMBERS (§ 70)

The act exempts the Connecticut Resources Recovery Authority's (CRRA) ad hoc members from personal liability for bonds the agency issues or for damage or injury (as long as it is not wanton, reckless, willful, or malicious) caused in performing duties within the scope of their employment or appointment. (The ad hoc members represent individual CRRA facilities. At least one-half of them must be municipal officials or their designees.) It requires CRRA to protect, save harmless, and indemnify its ad hoc members from financial loss and expense arising out of their alleged action or omission causing damage or injury (as long as it is not wanton, reckless, willful, or malicious) if they were discharging their duties or acting within the scope of their employment. The law provides the same protections for CRRA's directors, officers, and employees.

EFFECTIVE DATE: Upon passage

CONTRACT EXTENSIONS (§ 71)

The law requires state agencies extending contracts to buy supplies, materials, equipment, or contractual services that are subject to competitive bidding requirements to comply with those requirements unless the Department of Administrative Services (DAS) commissioner waives them for good cause. The act creates an exception to allow the DAS commissioner to extend for one year beyond their expiration contracts in effect on May 1, 2004 for state janitorial, building maintenance, security, and food and beverage services.

EFFECTIVE DATE: Upon passage

TRANSFER OF FUNDS FROM SPECIAL TRANSPORTATION FUND FOR CORE-CT (§ 73)

The act permits for FY 2004 the OPM secretary to transfer funds appropriated from the Special Transportation Fund to the Department of Transportation and the Department of Motor Vehicles for other current expenses to the Employers Social Security Tax and State Employees Health Service Cost accounts to implement accounting changes required by the CORE-CT financial management system. Prior law (PA 04-216) only allowed such transfers in FY 2005.

EFFECTIVE DATE: Upon passage

PROPERTY TAX EXEMPTION FOR THE DISABLED (§§ 76 & 77)

The act retroactively restores the mandatory local property tax exemption for up to \$1,000 worth of property owned by a permanently and totally disabled resident for the October 1, 2003 assessment year. The

General Assembly suspended the exemption for that year in 2003. The act requires each assessor to issue a correction certificate for any taxpayer affected by the suspension.

By law, to be eligible for the exemption, a property owner must be eligible for Social Security or other comparable federal, state, or local government disability benefits.

The act also restores the state reimbursement to towns for lost revenues attributable to the disabled property tax exemption in the October 1, 2003 assessment year. But for any fiscal year starting on or after July 1, 2004, it allows the amount payable to each town to be proportionately reduced if the appropriation in any fiscal year for reimbursing all towns is insufficient to pay every town its full amount. Under prior law, the state reimbursement was suspended for the October 1, 2002 and October 1, 2003 assessment years.

The act gives towns an extra month to file applications for reimbursements for disabled exemptions for the October 1, 2003 assessment year. It requires towns to file reimbursement information for that year with the OPM secretary by August 1, rather than July 1, 2004.

EFFECTIVE DATE: Upon passage and applicable to assessment years starting on or after October 1, 2003.

DEADLINES FOR NOTICE OF MODIFICATION OR DENIAL OF TAX BENEFITS (§ 78)

The law allows a person or business to appeal the OPM secretary's decision affecting eligibility under various state-reimbursed property tax exemptions and relief programs and requires the secretary to notify the claimant and appropriate local officials about his final decision. The act changes the deadline for the secretary to send these notices for some benefit programs.

Under prior law, the secretary had to send the final decision notice for all benefit programs by the statutory deadline for certifying the benefit amount to the comptroller. The act retains this deadline for the rebates for elderly and disabled renters tax relief program (CGS § 12-170d). For the following programs, the act requires the secretary to send the notice within one year after the assistance claim is filed:

1. veterans' additional state-reimbursed exemption (§ 12-81g);
2. totally disabled tax relief (§ 12-81(55));
3. distressed municipality/targeted investment community/enterprise zone tax relief for eligible manufacturing facilities, machinery, and equipment (§ 12-81(59), (60));
4. exemption for manufacturing machinery and equipment acquired as part of a technological upgrade (§ 12-81(70));

5. elderly and disabled homeowners property tax freeze (§ 12-129d); and

6. elderly and disabled homeowners circuit breaker tax relief program (§ 12-170aa).

For the following exemption programs, the act requires the secretary to send the final notice by the date the final modification must be reflected in his certification to the comptroller: (1) manufacturing machinery and equipment (§ 12-81(72)) and (2) commercial motor vehicles (§ 12-81(74)).

EFFECTIVE DATE: July 1, 2004 and applicable to certifications by the OPM secretary occurring on or after July 1, 2001.

CIRCUIT BREAKER PROGRAM REIMBURSEMENT ADJUSTMENTS (§ 79)

If, after the comptroller pays the annual grants to municipalities to reimburse them for tax reductions or assumed property tax liability amounts under the elderly and disabled homeowners circuit breaker tax relief program, the OPM secretary adjusts those grants, the act requires the adjustment to be reflected in the treasurer's next payment to the municipality under the program.

EFFECTIVE DATE: July 1, 2004 and applicable to claims for reimbursement filed on or after July 1, 2001.

GRANTS AND RESTRICTED ACCOUNTS FUNDS (§§ 80 & 81)

The act establishes a "Grants and Restricted Accounts Fund" and a "Transportation Grants and Restricted Accounts Fund," within the General and Special Transportation Fund, respectively. The funds must contain all money that is restricted and not available for general use, and that was formerly accounted for in the General and Special Transportation funds as "federal and other grants." Deposit of the restricted money into the new funds may begin once the state comptroller and OPM secretary certify that the CORE-CT project for fiscal services (the state's new accounting system) is operational. The act authorizes the comptroller to make whatever transfers are needed to ensure that all restricted money is in the new funds.

EFFECTIVE DATE: July 1, 2004

OFFICE OF EMERGENCY MANAGEMENT (§ 82)

The act allows the Office of Emergency Management (OEM), rather than OPM, to keep disaster assistance funds that it receives from the Federal Emergency Management Agency in a separate, nonlapsing fund or account within the General Fund and use them for administrative purposes. In practice, OEM has assumed responsibilities for disaster relief activities that were formerly handled by OPM's

Intergovernmental Policy Division. PA 04-219 eliminates OEM effective January 1, 2005 and transfers its functions, powers, duties, and personnel to a newly created Department of Emergency Management and Homeland Security.

EFFECTIVE DATE: Upon passage

PRIORITY SCHOOL DISTRICT GRANT ALLOCATION (§ 83)

The act changes the FY 2004-05 allocation of the priority school district grant adopted in PA 04-254 by increasing the early reading allocation to \$19,700,000 from \$18,647,286 and eliminating the \$1.1 million allocation for school improvement.

EFFECTIVE DATE: July 1, 2004

OPTIONAL SUBSTANCE ABUSE REHABILITATION SERVICES (§ 84)

The act requires the social services commissioner to provide Medicaid coverage for substance abuse rehabilitation services for adults who have serious or persistent mental illness, alcoholism, or other substance abuse conditions. It requires the commissioner to amend the state Medicaid plan to provide for the new coverage. Existing law requires Medicaid coverage for adult mental health rehabilitation services.

The act eliminates restrictions that limited coverage for adult mental health rehabilitation services to Department of Mental Health and Addiction Services (DMHAS) clients who receive services from providers under contract with DMHAS. Under the act, all covered rehabilitation services are open to Medicaid-eligible adults as long as they are provided by DMHAS-certified providers. The act authorizes the DMHAS commissioner to certify both mental health and substance abuse rehabilitation service providers for coverage purposes.

It requires DMHAS to (1) adopt certification regulations and (2) implement policies and procedures to administer certification during the regulation adoption process. The notice to adopt regulations must be printed in the Connecticut Law Journal within 20 days after the policies and procedures are adopted. The policies and procedures are valid until the regulations take effect.

EFFECTIVE DATE: Upon passage

PHARMACY DISPENSING FEE EXEMPTION (§ 85)

The act exempts prescription drugs under the State Administered General Assistance (SAGA) program from the \$3.15 per-prescription pharmacy dispensing fee that applies to other DSS medical assistance programs (recently reduced from \$3.30 by PA 04-258, §

10). Under PA 03-3, June 30 Special Session, the SAGA medical assistance program is being reorganized as a managed care program using federally qualified health centers or other providers and the pharmacy dispensing fee will be negotiated in a separate contract for this program.

EFFECTIVE DATE: July 1, 2004

RESIDENTIAL CARE HOME RATE INCREASE (§ 86)

The act increases state reimbursement rates for licensed residential care homes (RCHs) by 2¼% for FY 2004-05. But RCHs that would have received a lower rate on July 1, 2004 than they had in FY 2003-04 because of interim rate status or agreement with DSS do not receive this increase and, instead, must receive that lower rate on July 1, 2004.

EFFECTIVE DATE: July 1, 2004

SAGA MEDICAL ASSISTANCE ADMINISTRATION AND APPEALS (§ 87)

PA 03-3, June 30 Special Session, requires DSS to provide medical assistance to SAGA recipients using federally qualified health centers or other primary care providers. DSS can contract with a managed care organization (MCO) or other entity to perform administrative functions. The act permits the contract to allow the MCO or other entity to operate the program in whole or in part, not just its administrative functions. (DSS has apparently contracted with a single MCO to run the whole program.)

PA 04-258 permits SAGA medical assistance recipients to seek a DSS review of a denial of coverage for specific medical services only after they have exhausted the grievance process that may be available to them. Although the law already permits DSS to contract with an MCO to perform administrative functions, it does not specify what the allowable functions are. The act allows MCO contracts to include a grievance process for service denials. And it restates the recipients' entitlement to request administrative hearings once they have exhausted the contractual grievance process.

EFFECTIVE DATE: Upon passage

SAGA MEDICAL ASSISTANCE—CLAIMS PAYMENTS (§ 88)

Under the restructured SAGA medical assistance program, DSS pays the health centers or other entities prospectively based on their pro rata share of the cost of services provided, the number of clients served, or both. Previously, DSS paid claims retrospectively after

individual medical providers submitted them. Some of these retrospective claims are still outstanding.

Prior law credited an amount equal to the amount the OPM secretary certified for retrospective reimbursements to DSS's SAGA account for FY 2003-04 and made it available to DSS to pay retrospective reimbursement claims received during FY 2003-04. The act continues to credit this amount in FY 2004-05 and allows it to be used for reimbursement claims received during FY 2004-05.

EFFECTIVE DATE: Upon passage

SENDING INMATES OUT OF STATE (§ 89)

The law authorizes the DOC commissioner to contract with a government or private vendor for out-of-state supervision of 500 inmates. Prior law also authorized her to contract to send an additional 2,000 inmates out of state in FYs 2004 and 2005. The act (1) limits her authority to send inmates out of state in FY 2005 to an additional 1,000 rather than 2,000 inmates and (2) authorizes her to contract to send an additional 1,000 inmates out of state during FYs 2006 and 2007. As the law already provides for FYs 2004 and 2005 contracts, the act requires submission of a contract in FYs 2006 and 2007 to the Appropriations and Judiciary committees for review and comment before entering into the contract.

As under prior law, the government or private vendor must agree to be bound by the Interstate Corrections Compact and the facility used by Connecticut inmates must be in a state that has enacted the compact.

EFFECTIVE DATE: July 1, 2004

CONNECTICUT HOUSING FINANCE AUTHORITY'S (CHFA) DUTIES AND POWERS (§§ 90-96)

New Britain's Redevelopment Plan and Successor Entity (§ 90)

PA 03-6, June 30 Special Session (JSS), allowed New Britain and its housing authority, in cooperation with DECD and CHFA, to redevelop the Corbin Heights, Corbin Heights Extension, Pinnacle Heights, and Pinnacle Heights Extension housing projects following specific stipulations, including involving tenants of the affected units in the local planning committee that provided input on the redevelopment plan. This act makes several modifications to the 2003 act.

It allows CHFA (which the act specifies is the successor to the New Britain Housing Authority) to amend the approved redevelopment plan. But any amendment must be proposed and approved subject to

the requirements of existing law for developing the original plan, which includes holding a public hearing and meeting the criteria to qualify for the DECD commissioner's approval. An amendment may not be submitted for approval or approved by the commissioner unless it is developed with the advice of, and in consultation with, the local planning committee.

The act requires (1) CHFA to convene a new local planning committee and (2) CHFA's executive director to designate the minimum number of committee members. The committee must include at least two residents of the developments, including residents selected by a resident association, and at least two representatives of organizations that advocate for public housing residents. In addition, each resident association of the affected developments may select one representative. CHFA's executive director designates the committee's chairperson.

The act also requires CHFA to:

1. assure that the residents of the housing developments can participate fully in the planning, review, and implementation process and
2. help residents get access to expertise in tenant outreach, training, organizing, legal rights, and housing policy to (a) promote their participation and (b) protect their interests.

The act allows the committee to propose amendments to the original housing redevelopment master plan authorized according to PA 03-6, JSS. The committee must hold at least one public hearing before approving any amendments. Public hearing notices must be mailed or delivered to each tenant association representing tenants in the development and to each tenant household in the development at least 30 days in advance. Each hearing must additionally be publicized in the municipality where the development is located through posted notices at the development and in both general circulation newspapers in the municipality and weekly community newspapers.

A record must be kept of all comments the committee receives (1) at the amendment hearings and (2) at the hearing on the redevelopment plan held before submitting it to the DECD commissioner for approval (as required for the original plan under existing law). A summary of all the oral and written comments must be sent to the commissioner with the amendment.

EFFECTIVE DATE: Upon passage

CHFA'S Powers (§ 91)

The act limits CHFA's ability to provide assistance to local housing authorities or sponsors in connection with housing revitalization projects, as authorized by PA 03-6, JSS, to those in New Britain and Stamford.

EFFECTIVE DATE: Upon passage

DECD Property Transfer (§ 92)

The act appears to make a technical change in reference to DECD's authority to transfer certain property to CHFA, but uses erroneous references.

EFFECTIVE DATE: Upon passage

Payments In Lieu of Taxes (PILOTs) (§ 93)

The act extends the PILOTs provisions to property CHFA owns or leases under the moderate rental and primary housing programs. By law, DECD can enter into contracts with a municipality and its housing authority to make PILOT payments to the municipality for real property the authority owns or leases under DECD's moderate rental and primary housing programs. The payment must equal the amount of taxes the properties would generate if they were not tax-exempt. The act extends this to CHFA-owned or -leased property. The contract must provide that, in consideration for this PILOT, the municipality must waive the PILOT provisions that would otherwise apply, which equals 12.5% of the rent it receives for occupied costs or certain other authorized purposes.

EFFECTIVE DATE: Upon passage

Tenants Rights and Grievances Procedures (§ 94)

By law, housing authorities receiving state assistance must (1) provide their tenants with a written lease, (2) adopt a procedure for hearing tenant complaints and grievances, (3) adopt procedures for tenants to comment on proposed housing authority policy and procedure changes, and (4) encourage tenant participation in the housing authority's operation of state housing programs. The act extends these requirements to CHFA or its subsidiary when they are successor owners of housing previously owned by a housing authority for moderate-income rental housing or housing for elderly people.

EFFECTIVE DATE: July 1, 2004

CHFA Housing Operations (§ 95)

When CHFA or its subsidiary is a successor owner of housing previously owned by a housing authority for moderate-income rental housing or elderly housing, the act subjects them to the same requirements, and directs them to operate or dispose of the housing in compliance with the same laws, that apply to housing authorities.

EFFECTIVE DATE: Upon passage

Waiver For A 32-Unit Development (§ 96)

The act allows the DECD commissioner to waive certain housing authority regulations, including those

for maintenance of waiting lists, for any 32-unit rental housing property that a housing authority owned and sold to a private developer between October 1, 2003, and November 30, 2003. The housing authority may apply to the commissioner for the waiver to allow for the immediate use of available state-assisted housing to relocate families or individuals from the property who are eligible for it, but would otherwise be placed on a waiting list. Any waiver that the commissioner grants remains in effect until all eligible tenants displaced by the sale who are seeking state-assisted housing have been accommodated. It appears that only a housing property in Wallingford fits the above provisions.

EFFECTIVE DATE: Upon passage

**REIMBURSEMENT FOR CERTAIN BANKING
DEPARTMENT EXPENSES (§ 97)**

The act extends to FY 2005 a law allowing the banking commissioner to use up to \$3.6 million transferred from the Banking Fund to the Banking Department's other expense account to reimburse the Department of Public Works for the Banking Department's relocation expenses, furniture costs, and rent. Under prior law, reimbursements were allowed only during FYs 2003 and 2004.

EFFECTIVE DATE: Upon passage

**OPPORTUNITY INDUSTRIAL CENTERS (OICs)
AND CORRECTION DEPARTMENT WORKERS'
COMPENSATION CLAIMS (§ 98)**

The act requires the OPM secretary immediately to notify the correction and administrative services commissioners to hold back \$2 million from the DOC's workers' compensation account for FY 2004. It requires the secretary to monitor the account, including stipulated agreements, to ensure the money is not spent.

The act carries forward up to \$1 million of unspent money to FY 2005. It transfers \$200,000 to the Labor Department for Opportunity Industrial Centers (OICs) and splits it evenly between Bridgeport's and Waterbury's OICs for FY 2005. It allocates the remaining \$800,000 for workers' compensation claims during FY 2005.

EFFECTIVE DATE: July 1, 2004

**OFFICE OF POLICY AND MANAGEMENT (§§ 99 &
100)**

The act permits the OPM secretary to authorize any agency to carry forward appropriated funds in its account that are available because of delays in contractor payments caused by the attorney general's requirement for contractor affidavits. In January 2004, the attorney general adopted a policy requiring

contractors in any state realty contract valued at \$100,000 or more to sign an affidavit about past gift-giving practices. The policy requires each contractor to swear that, within the past 10 years, neither he nor any official or employee of his company gave a gift to (1) an official or employee of the agency awarding the contract or (2) any official or employee of an agency or department with supervisory or appointing authority over the contracting agency.

The act permits the OPM secretary to delegate any of his authority, powers, or duties to the deputy secretary.

EFFECTIVE DATE: Upon passage

REPRESENTING THE STATE IN APPEALS FROM LABOR DECISIONS (§ 101)

The act allows the attorney general to delegate to the OPM secretary his authority to represent the state in certain appeals to Superior Court from an arbitration decision or determination, or any other labor relations issue involving the Office of Labor Relations. The attorney general may enter into a memorandum of understanding with the secretary about the types of appeals covered by the delegation. The secretary would select attorneys in his office to handle the appeals.

EFFECTIVE DATE: Upon passage

FY 2004 APPROPRIATION BALANCES MAINTAINED (§ 102)

The act allows the comptroller to maintain for one month any appropriations balances that would otherwise lapse as of June 30, 2004 to permit FY 2004 obligations to be paid.

EFFECTIVE DATE: July 1, 2004

FOR-PROFIT HOSPITAL SALES TAX EXEMPTION (§§ 103 & 104)

The act revises a sales tax exemption applicable to for-profit hospitals and makes the new exemption effective one year earlier, as of July 1, 2004 instead of July 1, 2005.

It eliminates an exemption for patient-care-related medical equipment and supplies that for-profit hospitals buy or sell exclusively for their own purposes. Instead, it exempts items and services a for-profit hospital buys in connection with building and equipping a hospital facility, if the hospital filed a certificate of need for the facility before, and the certificate is pending on, the act's effective date. (The Sharon Hospital was the only for-profit hospital operating in Connecticut on the act's effective date (May 12, 2004).)

EFFECTIVE DATES: The new exemption is effective July 1, 2004. The exemption applying to building and

equipping a hospital facility is effective on passage and applies to sales occurring on or after July 1, 2005.

PRIVATE PROVIDER PAYMENT REPORT AND FUNDING (§ 105)

The act requires the OPM secretary, by September 1, 2004, to prepare a report for the previous biennium in consultation with budgeted state agency heads responsible for services related to health and hospitals, human services, education, and correction. The report must compare the increases the state paid during the previous biennium under contracts with private providers of these services to what it paid to state employees providing the same or similar services based on cost-of-living allowances or performance-based increases. This report must be included in the budget document for the biennium ending June 30, 2007 that the governor transmits to the General Assembly. The act also requires that any funding needed to provide an increase to the private providers equal to the average increase paid to these state employees for the previous biennium be included in the recommended current service appropriations for each affected agency for the following biennium. The act specifies that it does not limit the governor's ability to recommend reductions to current service appropriations in each budget document. (Current service appropriations are those needed to keep state services at the same level as for the prior biennium.)

EFFECTIVE DATE: July 1, 2004

MEDICAID WAIVER AUTHORITY LIMITATION (§ 106)

The act prohibits the DSS commissioner, between May 12, 2004 and June 30, 2005, from agreeing to any Medicaid waiver in which the federal government, as a condition of granting the waiver, requires the state to agree to limit the normal 50% federal cost-sharing in the program.

EFFECTIVE DATE: Upon passage

NONPAYMENT OF HUSKY B PREMIUM INCREASES (§ 107)

From May 12, 2004 to June 30, 2004, the act prohibits termination of any child's enrollment in HUSKY B for lack of payment of any premium increase the DSS commissioner implemented in FY 2003-04. (These were implemented on February 1, 2004.) It also requires the commissioner to examine the premium increases' impact on enrollment and to notify the Appropriations and Human Services committees by June 1, 2004 of any final premium increase adopted for FY 2004-05.

On June 1, 2004, DSS notified the legislature that it would no longer collect the higher premiums for the higher-income HUSKY B families, nor would it pursue premiums from the lower-income families. It also promised refunds to those families who had paid the increases or new premiums. The enabling statute remains unchanged.

EFFECTIVE DATE: Upon passage

APRN AND DRUG SAMPLES EFFECTIVE DATE CHANGE (§ 108)

The act moves the effective date to upon passage, rather than October 1, 2004, for a provision allowing advanced practice registered nurses (APRNs) working in noninstitutional settings (e.g., a doctor's office) to request, sign for, and receive drug samples that was enacted in PA 04-221. The law already allows APRNs to dispense such drugs.

EFFECTIVE DATE: Upon passage

THE GRADUATE INSTITUTE (§ 109)

The act authorizes the Graduate Institute to confer degrees and grant diplomas, subject to the requirements of the Board of Governors for Higher Education (BGHE). The BGHE granted the Graduate Institute's license to operate graduate programs in 1999. The institute offers four Masters of Arts programs including Conscious Evolution, Experimental Health and Healing, Holistic Thinking and Oral Traditions. (This authorization is repealed by PA 04-3, May Special Session.)

EFFECTIVE DATE: Upon passage

URBAN ACTION BONDS FOR LIBRARIES (§ 110)

The act increases the amount of Urban Action bonding that OPM may allocate for library renovations and improvements by \$2 million, from \$10 million to \$12 million. PA 04-1, May Special Session, previously doubled the amount of the Urban Action bonding OPM could allocate for libraries from \$5 million to \$10 million effective July 1, 2004.

EFFECTIVE DATE: Upon passage

EFFECTIVE DATE CHANGE (§ 111)

The act makes PA 04-81 effective on passage instead of October 1, 2004. PA 04-81 allows a licensed home health care agency that does not meet certain staffing requirements to provide hospice services in a rural town under a Department of Public Health waiver.

EFFECTIVE DATE: Upon passage

REPEALER-HOMELAND SECURITY AND COURT FEES (§ 112)

The act repeals a provision in PA 04-216 (the budget act) that transferred \$100,000 of the Division of Homeland Security's FY 2005 appropriation to the Commission on Fire Prevention and Control to be used to reimburse towns the costs of emergency responses on limited access highways.

The act also eliminates a separate \$5 filing fee on all civil actions except small claims matters (see description in §§ 13 & 14).

EFFECTIVE DATE: July 1, 2004

PA 04-3, May 2004 Special Session—SB 804

Emergency Certification

AN ACT AMENDING BUDGET IMPLEMENTATION PROVISIONS

SUMMARY: This act repeals legislation passed during the May 2004 Special Session authorizing The Graduate Institute to confer degrees and grant diplomas subject to the requirements of the Board of Governors for Higher Education (BGHE). BGHE granted the institute a license to operate graduate programs in 1999. The institute, located in Milford and New London, offers four masters of arts programs.

EFFECTIVE DATE: Upon passage

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